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No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1990

STATE OF CONNECTICUT,

Petitioner,

v.

DAISY HAMILTON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

JOHN J. KELLY
Chief State's Attorney
State of Connecticut

Counsel of Record:

STEVEN M. SELLERS
Assistant State's Attorney
Chief, Appellate Unit
Office, of the Chief State's Attorney
340 Quinnipiac Street
P.O. Box 5000
Wallingford, CT 06492
(203) 265-2373

MITCHELL S. BRODY
Assistant State's Attorney

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Where the Connecticut Supreme Court held that inadvertence is a requirement under the federal "plain view" doctrine, and, pursuant to that doctrine, affirmed the suppression of evidence that was not discovered inadvertently, should this Court grant a writ of certiorari, vacate the judgment below, and remand for further consideration in light of *Horton v. California*, 58 U.S.L.W. 4694 (U.S. June 5, 1990)?

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The State of Connecticut respectfully petitions that a writ of certiorari issue to review the judgment and opinion of the Connecticut Supreme Court, entered in this proceeding on April 24, 1990.

OPINION BELOW

The opinion of the Connecticut Supreme Court is reported at 214 Conn. 692, ___ A.2d ___ (1990) and is reprinted in the appendix, p. A-1, *infra*. The prior decision of the Connecticut Appellate Court is reported at 17

Conn. App. 385, 552 A.2d 834 (1989) and is reprinted in the appendix, p. A-25, *infra*.

JURISDICTION

The decision of the Connecticut Supreme Court was entered on April 24, 1990. The jurisdiction of this Court to review the judgment of the Connecticut Supreme Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Rule 10 of the Rules of the Supreme Court provides in pertinent part:

> .1. A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:
>
> (a) When a United States court of appeals has rendered a decision in conflict

with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a United States court of appeals.

(c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

STATEMENT OF THE CASE

Respondent Daisy Hamilton was charged by information with two counts of the crime of possession of narcotics with intent to sell or dispense and with the crime of possession of drug paraphernalia. The respondent filed a motion to suppress evidence.

At the suppression hearing, police testimony indicated that they had obtained four search warrants authorizing the search of the respondent's apartment, a tan and orange van without license plates located outside the apartment complex where the respondent resided, the person of the respondent's son, and the person of the

respondent. The items to be seized that were enumerated in the warrants included cocaine, paraphernalia employed in cutting and packaging cocaine, monies and records pertaining to the sale of cocaine, and any firearms of drug traffickers. The keys to the van were not listed. Appendix at A-3, 26; *State v. Hamilton*, 214 Conn. 692, 694-95, ___ A.2d ___ (1990) (*Hamilton* II); *State v. Hamilton*, 17 Conn. App. 385, 386-87, 552 A.2d 834 (1989) (*Hamilton* I).

The police had applied for the warrants based on information given to them by an informant that crack was being sold from the respondent's apartment and on their own observation of a subsequent "controlled buy" of cocaine involving the informant and the respondent's son. The police saw the son escort the informant from the respondent's apartment to the van, unlock and enter the van, and deliver drugs to the informant. Appendix at A-3-4, 26-27; *Hamilton* II, 214 Conn. at 695; *Hamilton* I, 17 Conn. App. at 387.

During the subsequent execution of the warrants by the police, Officer DeRiso, who was in charge of the search party, entered the respondent's apartment and asked her if the keys to the van parked outside were in the apartment. The respondent denied knowledge of the owner of the van or the whereabouts of the keys. When DeRiso asked other officers whether anyone had found the keys to the van, Officer Russell seized and turned over a set of keys that he had discovered earlier while searching the respondent's bedroom for narcotics. DeRiso used these keys to unlock the van, which contained incriminating evidence including several vials of cocaine. Appendix at A-4-5, 27; *Hamilton* II, 214 Conn. at 695-96;

Hamilton I, 17 Conn. App. at 387. DeRiso's testimony at the suppression hearing indicated that he had reason to believe, prior to the procurement of the warrants, that the van was ordinarily locked and that its keys were kept in the defendant's apartment. Appendix at A-22-23, 29-30; *Hamilton* II, 214 Conn. at 711; *Hamilton* I, 17 Conn. App. at 389-90.

At the hearing on the motion to suppress, the respondent argued that the keys should be suppressed because they had not been listed in the search warrants and, therefore, were illegally seized. The state maintained that the keys were admissible under the plain view doctrine. The trial court, in orally granting the motion, held that the seizure did not fall within this doctrine because the keys had not been discovered inadvertently. Appendix at A-5; *Hamilton* II, 214 Conn. at 696-97.

The state appealed from this judgment to the Connecticut Appellate Court.[1] That court held that the trial court reasonably could have concluded that the keys were not inadvertently discovered in the course of the search of the respondent's apartment, and that the seizure of the keys was not justified by the plain view doctrine. Appendix at A-31-32; *Hamilton* I, 17 Conn. App. at 391. After granting the state's petition for certification, the Connecticut Supreme Court affirmed the judgment of the Appellate Court.

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[1] Because the petitioner represented that it had planned to demonstrate the respondent's complicity in the crime by proving that the keys to the van had been found in her apartment, the trial court agreed to dismiss the case with prejudice and grant the state permission to appeal. Appendix at A-27; *State v. Hamilton* I, 17 Conn. App. 385, 387-88, 552 A.2d 834 (1989).

In upholding the Appellate Court, the Connecticut Supreme Court rejected the state's contention that pursuant to federal law "there is no inadvertency requirement under the plain view doctrine." Appendix at A-8-12; *Hamilton* II, 214 Conn. at 699-702. Connecticut's highest court observed that it had "adopted the inadvertence limitation and . . . consistently applied it as an element of the plain view doctrine." *Id.* at 701; Appendix at A-10.

The Connecticut Supreme Court noted that the keys at issue did not fall within the exception to the inadvertence requirement for contraband, stolen goods, or objects dangerous in themselves. Appendix at A-11-12; *Hamilton* II, 214 Conn. at 701. The court then addressed the question of the degree of expectation that was required to make a discovery by the police inadvertent. In adopting the standard that the police must be without probable cause to believe evidence would be discovered until they actually observe it in the course of an otherwise justified search; *id* at 703, Appendix at A-13; the court declined to follow the Second Circuit Court of Appeal's broader interpretation of the inadvertence limitation, as set out in *United States v. $10,000 in United States Currency*, 780 F.2d 213 (2d Cir. 1986). *Hamilton* II, 214 Conn. at 705-07; Appendix at A-14-16. In the Second Circuit's view, the focus of the inquiry on inadvertence should be directed toward the good faith of the police action. 780 F.2d at 218-19.

Finally, the Connecticut Supreme Court ruled that the Appellate Court did not err in concluding that the discovery of the keys was not inadvertent within the meaning of the plain view exception to the warrant requirement of the fourth amendment to the United States Constitution.

The state Supreme Court held that the trial court reasonably could find that the police "had probable cause to believe that the keys would be discovered in the defendant's apartment." *Hamilton* II, 214 Conn. at 712; Appendix at A-23.

REASONS FOR GRANTING THE PETITION

THE OPINION BELOW DIRECTLY CONFLICTS WITH *HORTON V. CALIFORNIA* AND SUMMARY REVERSAL IS WARRANTED

The opinion of the Connecticut Supreme Court in *Hamilton* II directly conflicts with the opinion of this Court in *Horton v. California*, 58 U.S.L.W. 4694 (U.S. June 5, 1990), which was issued following the decision in *Hamilton* II but prior to the time the State of Connecticut filed its petition for a writ of certiorari.

The court in *Hamilton* II construed the federal "plain view" exception to the fourth amendment's warrant requirement as containing an inadvertency limitation. This Court ruled to the contrary in its intervening decision in *Horton*. By affirming the suppression of evidence on the ground that its discovery was not inadvertent, the Connecticut Supreme Court has interpreted the "plain view" doctrine in a manner that is squarely inconsistent with the controlling federal precedent on this matter.

This case can be handled most expeditiously by granting the petition for a writ of certiorari, vacating the judgment below, and remanding the case for reconsideration in light of *Horton*. Full briefing and argument are unnecessary because the decision in *Horton* is dispositive.

This Court has disposed of numerous cases in a similar fashion when their legal bases were undermined by intervening decisions. *See, e.g., Lane v. Smith,* 457 U.S. 1102, 102 S.Ct. 2878 (1982); *see generally* A. Hellman, *Error Correction, Lawmaking, and the Supreme Court's Exercise of Discretionary Review,* 44 U. Pitt. L. Rev. 795, 839 n.239 (1983).

CONCLUSION

The Connecticut Supreme Court has adopted an inadvertency limitation on the "plain view" doctrine which directly conflicts with the contrary holding of an intervening decision by this Court. Therefore, the State of Connecticut respectfully urges this Court to grant the petition for a writ of certiorari, vacate the judgment below, and remand for reconsideration in light of *Horton v. California,* 58 U.S.L.W. 4694 (U.S. June 5, 1990).

Respectfully submitted,

The State Of Connecticut

JOHN J. KELLY
Chief State's Attorney
State of Connecticut

Counsel of Record:

STEVEN M. SELLERS
Assistant State's Attorney
Chief, Appellate Unit
Office of the Chief State's Attorney

Of Counsel:

MITCHELL S. BRODY
Assistant State's Attorney
Appellate Unit
Office of the Chief State's Attorney

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Opinion of the Connecticut Supreme Court (*Hamilton II*) A-1

Opinion of the Connecticut Appellate Court (*Hamilton I*) A-25

STATE OF CONNECTICUT *v.* DAISY HAMILTON
(13696)

PETERS, C. J., HEALEY, SHEA, GLASS and HULL, Js.

The state, with the permission of the trial court, appealed to the Appellate Court from the trial court's judgment dismissing narcotics charges against the defendant following the granting of a motion to suppress a set of keys that were seized by the police during a search of her apartment. The keys had been used to unlock a van where drugs were discovered. The Appellate Court affirmed the judgment of the trial court, and the state, on the granting of certification, appealed to this court. *Held* that the Appellate Court did not err in upholding the trial court's determination that the discovery of the keys, which were not listed in the warrant to search the apartment, was not inadvertent within the meaning of the plain view exception to the warrant requirement, and that their seizure was, therefore, illegal.

Inadvertence limitation of plain view doctrine, discussed.

Argued January 3 – decision released
April 24, 1990

Information charging the defendant with two counts of the crime of possession of narcotics with intent to sell or dispense and with one count of crime of possession of drug paraphernalia in a drug factory situation, brought to the Superior Court in the judicial district of Fairfield, where the court, *Stodolink, J.*, granted the defendant's motion to suppress certain evidence and rendered judgment dismissing the charges, and the state, on the granting of permission, appealed to the Appellate Court, *Spallone, Stoughton* and *Norcott, Js.*, which affirmed the

trial court's decision, and the state, on the granting of certification, appealed to this court. *Affirmed.*

Frederick W. Fawcett, assistant state's attorney, with whom, on the brief, were *Donald A. Browne,* state's attorney, and *John Smriga,* assistant state's attorney, for the appellant (state).

Mark F. Gross, for the appellee (defendant).

ARTHUR H. HEALEY, J. The dispositive issue in this appeal is whether the Appellate Court erred in concluding that the discovery of certain keys used to unlock a van where drugs were stored was not inadvertent and thus did not qualify under the plain view doctrine as an exception to the warrant requirement.[1] The Appellate Court in *State v. Hamilton,* 17 Conn. App. 385, 552 A.2d 834 (1989), held that, on the basis of the testimony given during the pretrial hearing on the defendant's motion to suppress the van keys seized by the police in a search of her apartment, the trial court could have reasonably concluded that Detective Richard DeRiso had reason to believe, prior to the procurement of the four search warrants involved, that the van was ordinarily locked, that the keys were kept in the defendant's apartment, and that

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[1] This court also certified a second issue which was presented as follows: "When in the course of a search pursuant to a warrant the police discover keys that may be used to unlock a van that is also authorized to be searched under the warrant, may the keys be seized for that purpose?" Because the gravamen of the defendant's motion to suppress was not the use of the keys to open the van but the introduction into evidence of proof that the keys that fit the lock on the van were found in the defendant's possession, we do not address this issue.

DeRiso entered the defendant's apartment with the specific purpose of locating the keys and thus the discovery of such keys was not inadvertent to come within the plain view doctrine. We granted the state's petition for certification to appeal from the Appellate Court; *State v. Hamilton*, 211 Conn. 804, 559 A.2d 1138 (1989); and conclude that the Appellate Court did not err in finding that the discovery of the keys was not inadvertent under the plain view doctrine.

Although the Appellate Court has set out sufficient facts, we need to present those facts relevant to the proper disposition of the issue presented. On February 17, 1987, Detective DeRiso and Miguel Cardozo of the Bridgeport police department obtained four search warrants authorizing the search of (1) the defendant's residence, building 5, apartment 305, of the P. T. Barnum Apartments in the city of Bridgeport; (2) a tan and orange van without license plates located at the P. T. Barnum Apartments; (3) the person of the defendant's son, Dayomas Hamilton; and (4) the person of the defendant, Daisy Hamilton. The warrant listed the items to be seized as including, inter alia, "[c]ocaine, any paraphernalia used in cutting and packaging of cocaine such as scales, grinders, strainers, measuring spoons, plastic baggies, glassine bags, pyramid papers, plastic vials, lactose, any monies and or records pertaining to the sales of cocaine and any firearms used for the personal protection of drug traffickers."

DeRiso and Cardozo had applied for the warrants on the basis of information given to them by an informant that crack was being sold from the defendant's apartment and on the basis of their own observation on February 11,

1987, of a subsequent "controlled buy" involving the defendant's son, Dayomas, conducted with the participation of an informant. While conducting the "controlled buy," DeRiso and Cardozo had observed Dayomas escort the informant from the defendant's apartment to an unregistered tan and orange Ford van located outside the apartment, which Dayomas "unlocked and entered." The two officers observed Dayomas exit the van and deliver the drugs to the informant.

On February 18, 1987, DeRiso and other police officers executed the warrants. Prior to executing the warrants, however, DeRiso or Cardozo held a "briefing meeting." At that meeting, the officers were briefed about the "controlled buy" from the Ford van and told to search for narcotics. At the same time, several officers were assigned to guard the Ford van, and Detective Thomas Russell was assigned to search the defendant's bedroom. Shortly after DeRiso, who was in charge of the search party, and the other officers entered the defendant's apartment, he asked the defendant "if the keys to a van parked outside were in the apartment." The defendant stated, "I don't know who that van belongs to nor do I know where the keys are."

In the course of searching the defendant's bedroom for narcotics, Russell came across a set of keys on a shelf. He did not seize the keys at that time. Russell testified at the hearing on the motion to suppress that as he looked at these keys, they meant nothing to him "whatsoever." While Russell was still searching in the bedroom, DeRiso asked the officers whether anyone found keys to a Ford van. It was only then that Russell attached significance to the keys. Russell then took the keys off the shelf and gave

them to DeRiso. DeRiso took the keys and opened the Ford van described in the warrant. In the defendant's apartment and in the Ford van, the officers found incriminating evidence including several vials of cocaine.[2] The defendant was subsequently charged by information with two counts of unlawful possession of a narcotic substance with intent to sell in violation of General Statutes § 21a-278(b) and one count of possession of drug paraphernalia in a drug factory situation in violation of General Statutes § 21a-277(c).

At the hearing on the motion to suppress, defense counsel argued, inter alia, that the keys should be suppressed because they had not been listed in the search warrant and, therefore, the seizure of the keys was illegal. The state argued that the keys were admissible under the plain view exception to the warrant requirement. The court orally granted the defendant's motion to suppress, holding that the seizure of the keys was not legal under the plain view exception because the keys had not been discovered inadvertently. In doing so, the trial court noted that keys are not "of themselves" contraband and are not normally tools of crimes. From this judgment the state appealed to the Appellate Court, pursuant to General Statutes § 54-96.

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[2] The officers reported on February 18, 1987, on their inventory sheet that they found only "one plastic baggie containing vials with caps, one hand held scale, one larger plastic baggie containing smaller plastic zip lock baggies." Keys were not mentioned in the inventory. It was not until after the first day of the suppression hearing that the state made a full disclosure of the exact items seized which included the set of van keys.

The Appellate Court held that the trial court could reasonably have concluded that the keys were not inadvertently discovered in the course of the search of the defendant's apartment within the meaning of the plain view exception and that the seizure of the keys was therefore not justified by that exception. *State v. Hamilton*, supra, 391. The court stated that "[f]or a discovery to be inadvertent within the meaning of the plain view exception, police must not have anticipated the discovery or have known in advance the location of the evidence. . . . A discovery is inadvertent if it occurs 'without premeditation or prior intention.' " Id., 389. We agree.

The fourth amendment to the United States constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." This amendment prohibits general and exploratory searches. Both state and federal courts are required to exclude evidence obtained by means of searches found violative of the fourth amendment. *Weeks v. United States*, 232 U.S. 383, 34 S. Ct. 341, 58 L. Ed. 652 (1914), made applicable to states in *Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961); see *State v. DelVecchio*, 149 Conn. 567, 572-73, 576, 182 A.2d 402 (1962).

It has been said that "searches conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions." *Katz v. United*

States, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967); *State v. Zindros*, 189 Conn. 228, 236-37, 456 A.2d 288 (1983), cert. denied, 465 U.S. 1012, 104 S. Ct. 1014, 29 L. Ed. 2d 244 (1984). In *Coolidge v. New Hampshire*, 403 U.S. 443, 464-73, 91 S. Ct. 2022, 29 L. Ed.2d 564 (1971), a plurality of the United States Supreme Court created an exception to the warrant requirement of the fourth amendment known as the "plain view" doctrine. This doctrine "is based upon the premise that the police need not ignore incriminating evidence in plain view while they are operating within the parameters of a valid search warrant or are otherwise entitled to be in a position to view the items seized." *State v. Ruth*, 181 Conn. 187, 193, 435 A.2d 3 (1980). A plain view seizure is reasonable under the fourth amendment if the police: (1) were lawfully on the premises and engaged in a lawful activity; (2) discovered the evidence inadvertently; and (3) have probable cause to believe there is a reasonable relationship between the evidence seized and the criminal behavior under investigation. *Texas v. Brown*, 460 U.S. 730, 741-43, 103 S. Ct. 1535, 75 L. Ed. 2d 502 (1983); *Coolidge v. New Hampshire*, supra, 466; *State v. Reddick*, 207 Conn. 323, 335, 541 A.2d 1209 (1988); *State v. Magnano*, 204 Conn. 259, 271, 528 A.2d 760 (1987); *State v. Altrui*, 188 Conn. 161, 179, 448 A.2d 837 (1982); *State v. Graham*, 186 Conn. 437, 443-44, 441 A.2d 857 (1982); *State v. Federici*, 179 Conn. 46, 56, 425 A.2d 916 (1979); *State v. Onofrio*, 179 Conn. 23, 39-40, 425 A.2d 560 (1979); *State v. Pepe*, 176 Conn. 75, 79-80, 405 A.2d 51 (1978); *State v. Krause*, 163 Conn. 76, 82-83, 301 A.2d 234 (1972); W. LaFave, Search and Seizure § 4.11(a). In this case, in view of the certified question, we

only address the inadvertence limitation of the plain view doctrine.

The plurality in, *Coolidge v. New Hampshire*, supra, 469-71, in setting out the inadvertence limitation, stated: "The rationale of the exception to the warrant requirement . . . is that a plain-view seizure will not turn an initially valid (and therefore limited) search into a 'general' one, while the inconvenience of procuring a warrant to cover an inadvertent discovery is great. But where the discovery is anticipated, where the police know in advance the location of the evidence and intend to seize it, the situation is altogether different. The requirement of a warrant to seize imposes no inconvenience whatever, or at least none which is constitutionally cognizable in a legal system that regards warrantless searches as *'per se* unreasonable' in the absence of 'exigent circumstances.' "

The state contends, however, that there is no inadvertency requirement under the plain view doctrine. It asserts that twelve years after *Coolidge* was decided, the United States Supreme Court in *Texas v. Brown*, supra, was divided as to whether inadvertency was a requirement.

In *State v. Ruscoe*, 212 Conn. 223, 237 n.8, 563 A.2d 267 (1989), cert. denied, ___ U.S. ___, 110 S. Ct. 1144, 107 L. Ed. 2d 1049 (1990), we noted "the uncertain status of the 'inadvertence' aspect of the plain view doctrine." In *Ruscoe*, we recognized that "[t]his 'requirement' of the plain view doctrine has never been accepted by a judgment supported by a majority of the United States Supreme Court." Id.; see *Arizona v. Hicks*, 480 U.S. 321, 330, 107 S. Ct. 1149, 94 L. Ed. 2d 347 (1987) (White, J.,

concurring) (requirement of inadvertency never accepted by a majority of the court), (O'Connor, J., with Rehnquist, C. J., and Powell, J., dissenting) (though inadvertency requirements of *Coolidge* never expressly adopted by the majority of the court, *Coolidge* plurality decision should be point of reference for further discussion of the issue); *Texas v. Brown*, supra, 743 (plurality opinion) ("[w]hatever may be the final disposition of the 'inadvertence' element of 'plain view,' it clearly was no bar to the seizure here"), (White, J., concurring) (no inadvertency requirement), (Powell, J., with Blackmun, J., concurring) (no reason to criticize *Coolidge* because generally accepted for more than a decade); *Washington v. Chrisman*, 455 U.S. 1, 5-6, 102 S. Ct. 812, 70 L. Ed. 2d 778 (1982) (omitted as a separate requirement); *Coolidge v. New Hampshire*, supra (plurality opinion) (inadvertency requirement endorsed), (Black, J., with Blackmun, J., dissenting) (no inadvertency required for plain view), 517 (White, J., with Burger, C. J., dissenting) (criticizing inadvertency requirement as "punitive and extravagant application of the exclusionary rule").

Although a majority of the United States Supreme Court has not adopted the inadvertence aspect, most lower courts have adopted it as an essential element of the plain view doctrine. See *Wolfenbarger v. Williams*, 826 F.2d 930 (10th Cir. 1987); *Perlman v. Chicago*, 801 F.2d 262, 266 (7th Cir. 1986), cert. denied, 480 U.S. 906, 107 S. Ct. 1349, 94 L. Ed. 2d 520 (1987); *United States v. Newton*, 788 F.2d 1392, 1394-95 (8th Cir. 1986), cert. denied, ___ U.S. ___, 109 S. Ct. 841, 102 L. Ed. 2d 973 (1989); *United States v. Fawole*, 785 F.2d 1141, 1146-47 (4th Cir. 1986); See *United States v. $10,000 in United States Currency*, 780 F.2d 213,

218 (2d Cir. 1986); *United States v. Liberti*, 616 F.2d 34, 36 (2d Cir.), cert. denied, 446 U.S. 952, 100 S. Ct. 2918, 64 L. Ed. 2d 808 (1980); *United States v. Hare*, 589 F.2d 1291, 1294 (6th Cir. 1979); *United States v. Worthington*, 544 F.2d 1275, 1280 (5th Cir.), cert. denied, 434 U.S. 817, 98 S. Ct. 55, 54 L. Ed.2d 72 (1977); *Commonwealth v. Cefalo*, 381 Mass. 319, 409 N.E.2d 719 (1980); *State v. Clark*, 592 S.W.2d 709 (Mo. 1979), cert. denied, 449 U.S. 847, 101 S. Ct. 132, 66 L. Ed. 2d 57 (1980); *State v. Richards*, 294 N.C. 474, 242 S.E.2d 844 (1978); *Commonwealth v. Millard*, 273 Pa. Super. 523, 417 A.2d 1171 (1979); see also W. LaFave, supra, § 4.11 (d), p. 350 and cases cited therein; W. Ringel, Searches and Seizures, Arrests and Confessions § 6.5 (a)(2) and cases cited therein; but see *North v. Superior Court*, 104 Cal. Rptr. 833, 502 P.2d 1305 (1972); *State v. Pontier*, 95 Idaho 707, 518 P.2d 969 (1974); *State v. King*, 191 N.W.2d 650 (Iowa 1971), cert. denied, 406 U.S. 908, 92 S. Ct. 1617, 31 L. Ed. 2d 819 (1972); *State v. Romero*, 660 P.2d 715 (Utah 1983).

This court has adopted the inadvertence limitation and has consistently applied it as an element of the plain view doctrine. See *State v. Reddick*, supra; *State v. Altrui*, supra; *State v. Graham*, supra; *State v. Federici*, supra; *State v. Pepe*, supra; *State v. Watson*, 165 Conn. 577, 587, 345 A.2d 532 (1973); *State v. Krause*, supra. In *State v. Couture*, 194 Conn. 530, 547, 482 A.2d 300 (1984), cert. denied, 469 U.S. 1192, 105 S.Ct. 967, 83 L. Ed. 2d 971 (1985), we held, however, that "inadvertence is not required if the items seized fall under the category of contraband, stolen property or objects dangerous in themselves." See *State v. Ruscoe*, supra, 238 (contraband involved). In *Coolidge v. New Hampshire*, supra, 472, Justice Stewart, writing for the

plurality, carefully pointed out that *Coolidge* did not involve contraband, stolen goods or objects dangerous in themselves. He stated that "to extend the scope of such an intrusion to the seizure of objects – not contraband nor stolen nor dangerous in themselves – which the police know in advance they will find in plain view and intend to seize, would fly in the fact of the basic rule that no amount of probable cause can justify a warrantless seizure." Id., 471.[3] A number of lower courts have also interpreted *Coolidge* to have held the inadvertence limitation inapplicable to contraband, stolen goods and objects dangerous in themselves. See *United States v. Johnson*, 707 F.2d 317, 321 (8th Cir. 1983); *United States v. Vargas*, 621 F.2d 55, 56 (2d Cir.), cert. denied, 449 U.S. 854, 101 S. Ct. 150, 66 L. Ed. 2d 68 (1980); see also *United States v. Freeman*, 685 F.2d 942, 954 n.7 (5th Cir. 1982), and cases cited therein; W. LaFave, supra.

This case does not involve the seizure of contraband, stolen goods, or objects dangerous in themselves. The item that was allegedly unconstitutionally seized was a

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[3] In Justice White's dissent and concurrence in *Coolidge v. New Hampshire*, 403 U.S. 443, 519, 91 S. Ct. 2022, 29 L. Ed. 2d 564, reh. denied, 484 U.S. 874, 92 S. Ct. 26, 30 L. Ed. 2d 120 (1971), he stated: "Apparently, contraband, stolen or dangerous materials may be seized when discovered in the course of an otherwise authorized search even if the discovery is fully anticipated and a warrant could have been obtained." Moreover, Justice Black, who also dissented on this point, apparently construed the plurality opinion in the same manner. Id., 507 n.4; see also *United States v. Liberti*, 616 F.2d 34, 36 (2d Cir.), cert. denied, 446 U.S. 952, 100 S. Ct. 2918, 64 L. Ed. 2d 808 (1980).

set of keys. Therefore, on the basis of this court's adoption and application of the plain view doctrine, the inadvertent discovery limitation of the plain view doctrine is applicable to the seizure in this case.

It has been noted that "[t]he most serious problem with the plurality's approach [in *Coolidge*] to plain view is that Justice Stewart nowhere defined the degree of expectation required to make a discovery by the police inadvertent." H. Kalven, "The Supreme Court, 1970 Term," 85 Harv. L. Rev. 3, 244 (1971). The court in *Coolidge* simply stated "where the discovery is anticipated, where the police know in advance the location of the evidence and intend to seize it," the plain view doctrine does not apply. *Coolidge v. New Hampshire*, supra, 470. In *State v. Pepe*, supra, 79-80, this court stated: "The police need not be caught completely by surprise for a discovery to be inadvertent, so long as they did not anticipate the discovery or know in advance the location of evidence and intent [sic] to seize."[4] If the police were completely surprised by their discovery of the evidence seized in plain view, there is no question that the discovery is inadvertent. The question of whether a discovery is inadvertent arises, however, where the police anticipated finding the

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[4] *State v. Pepe*, 176 Conn. 75, 80, 405 A.2d 51 (1978), involved stolen goods. After our decision in *Pepe*, we held that "inadvertence is not required if the items seized fall under the category of contraband, stolen property or objects dangerous in themselves." *State v. Couture*, 194 Conn. 530, 547, 482 A.2d 300 (1984), cert. denied, 469 U.S. 1192, 105 S. Ct. 967, 83 L. Ed. 2d 971 (1985); see *State v. Ruscoe*, 212 Conn. 223, 237 n.8, 563 A.2d 267 (1989), cert. denied, ___ U.S. ___, 110 S.Ct. 1144, 107 L. Ed. 2d 1049 (1990).

evidence and had reason to believe the evidence would be found but failed particularly to describe that item in the search warrant.

In *United States v. Hare*, supra, 1294, the Sixth Circuit Court of Appeals provides an analysis of the inadvertence limitation of the plain view doctrine that we find persuasive. In *Hare*, the court interpreted "inadvertence" in the context of the plain view doctrine to mean "that the police must be without probable cause to believe evidence would be discovered until they actually observe it in the course of an otherwise justified search." The court reasoned that: "There are many times when a police officer may 'expect' to find evidence in a particular place, and that expectation may range from a weak hunch to a strong suspicion. However, the Fourth Amendment prohibits either a warrant to issue or search based on such an expectation. Yet if in the course of an intrusion wholly authorized by another legitimate purpose, that hunch or suspicion is confirmed by an actual observation, the police are in precisely the same position as if they were taken wholly by surprise by the discovery. The same exigent circumstances exist, and no warrant could have been obtained before the discovery." Id.

The court further stated: "At first, it may seem illogical to hold that police who lawfully enter premises and discover evidence which is not described in their warrant, in the course of a properly limited search, may not seize it if they *knew* they would find it before entering, but may seize it if they only thought they might find it, or if they discover it unexpectedly. After all, the line between suspicion and probable cause is seldom very clear. It makes sense, however, if the fact is kept in mind

that a warrant is normally required before a search can be conducted or a seizure effectuated, and if it is remembered that the only reason plain view seizures are permitted at all is because the intrusion which the Fourth Amendment seeks to guard against has already lawfully occurred, and the police are faced with a situation in which they observe evidence which they could not have obtained permission to seize, and which now is likely to disappear or be destroyed if they stop and leave to obtain a new warrant. This is the 'exigency' which underlies the plain view doctrine, and without this exigency the entire rationale falls. We note that the police cannot create their own exigency by simply failing to obtain a warrant until they are faced with the evidence." Id., 1295.[5]

The Appellate Court, in stating that "[a] discovery is inadvertent if it occurs 'without premeditation or prior

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[5] For other jurisdictions adopting the analysis of "inadvertence" in *United States v. Hare*, 589 F.2d 1291 (6th Cir. 1979), see, e.g., *People v. Stoppel*, 637 P.2d 384 (Colo. 1981) (adopting the "reasoned and thorough evaluation of inadvertence"); see *State v. Howard*, 448 So. 2d 713, 718 (La. App. 1984); *People v. Myshock*, 116 Mich. App. 72, 321 N.W.2d 849 (1982); *State v. Clark*, 592 S.W.2d 709 (Mo. 1980), cert. denied, 449 U.S. 847, 101 S. Ct. 132, 66 L. Ed. 2d 57 (1980); *State v. White*, 322 N.C. 770, 370 S.E.2d 390, cert. denied, ___ U.S. ___, 109 S. Ct. 399, 102 L. Ed. 2d 387 (1988).

One commentator has noted that while courts and commentators have not agreed on the scope of the "inadvertence" element of the plain view doctrine, "the better position seems to be that a discovery is inadvertent even if the police suspected they would find an item, unless they had probable cause to obtain a warrant to search for it. See, e.g. . . . *United States v. Hare*, [supra,] 1294 . . . . " L. Bloom, "The Law Office Search: An Emerging Problem and Some Suggested Solutions," 69 Georgetown L.J. 1, 85-86 n. 439 (1980).

intention,' " quoted *United States v. $10,000 in United States Currency*, supra, in which the Second Circuit Court of Appeals broadly interpreted the inadvertence limitation. *State v. Hamilton*, supra, 389. In that case, the court stated that the "focus of the [suppression] hearing is better directed toward the good faith of the police action when fully reviewed" instead of focusing on whether the police had probable cause to know the evidence would be discovered. Id., 219. The court stated that "where the proof indicates that the police have conducted a thorough investigation of the crime and the means available to prove it and the search is conducted in a manner reasonable in duration and intensity, the property seized may be found to be inadvertently discovered in plain view." Id.

The court, in rejecting a probable cause analysis, stated: "Nor is the existence of probable cause, unrecognized by the police, sufficient to bar discovery as not inadvertent. Such a purely 'objective' approach would exclude important evidence simply because the police 'by oversight or acting from an abundance of caution or out of a misapprehension of what it takes to obtain a search warrant covering that evidence, failed to include that item in the warrant executed.' 2 W. LaFave, [supra,] § 4.11 at 181." Id., 218. We do not find persuasive the Second Circuit Court of Appeals' interpretation of the inadvertence aspect of the plain view doctrine.

The Second Circuit's interpretation of "inadvertence" permits a warrantless seizure of an item even though the police know the location of the item and intend to seize it, so long as the police acted in good faith in executing the warrant. We believe that this interpretation is contrary to what the plurality intended the inadvertence limitation to

mean. In *Coolidge*, the plurality stated: "If the initial intrusion is bottomed upon a warrant that fails to mention a particular object, *though the police know its location and intend to seize it*, then there is a violation of the express constitutional requirement of 'Warrants . . . particularly describing . . . [the] things to be seized.' . . . [T]o extend the scope of such an intrusion to the seizure of objects . . . which the police know in advance they will find in plain view and intend to seize, would fly in the face of the basic rule that no amount of probable cause can justify a warrantless seizure." *Coolidge v. New Hampshire*, supra, 471. It is apparent that *Coolidge* does not support a good faith standard but rather it was intended to prevent a plain view seizure when the police knew in advance the location of an item and intended to seize it. See H. Wallin, "The Uncertain Scope of the Plain View Doctrine," 16 Baltimore L. Rev. 266, 278 (1987). The court in *$10,000 in United States Currency* permits, however, such a seizure so long as the seizing officer acted in good faith in executing the warrant. The court stated, "even if the police in good faith failed to mention an item in the warrant, the manner in which the search was actually conducted can render discovery no longer inadvertent." *United States v. $10,000 in United States Currency*, supra, 219.

While it is true that the court in *Coolidge v. New Hampshire*, supra, 470, was concerned with turning "an initially valid (and therefore limited) search into a 'general one,' " that concern was based on the fourth amendment requirement that "warrants shall . . . particularly [describe] the place to be searched, and the persons or things to be seized." U.S. Const., amend. IV. "The [particularity requirement of the fourth amendment] was a

direct response to the evil of the general warrant, one of the abuses by the Crown that led to the American revolution: '[T]he problem [posed by the general warrant] is not that of intrusion *per se*, but of a general exploratory rummaging in a person's belongings . . . . [The fourth amendment addressed the problem] by requiring a "particular description" of the things to be seized.' *Andresen v. Maryland*, 427 U.S. 463, 480, 96 S. Ct. 2737, 2748, 49 L. Ed. 2d 627 (1976) (quoting *Coolidge v. New Hampshire*, [supra, 467])." *United States v. Shoffner*, 826 F.2d 619, 630 (7th Cir. 1987). If the police know in advance that the evidence will be discovered and they intend to seize it, failure to include that evidence in the search warrant violates the particularity requirement of the fourth amendment regardless of any claimed good faith of the officer.[6] For

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[6] One commentator has noted that "[c]ourts relying on a good faith criterion must examine the subjective intent of [the] intruding officers. This determination entails inquiry into whether the failure to list the evidence was deliberate or accidental, whether the invasion was undertaken with the expectation that these objects would be seized, and whether all the officers were operating under the same misapprehension. A more practical guide for determining whether seizures are inadvertent is the familiar and workable probable cause standard." H. Wallin, "The Uncertain Scope of the Plain View Doctrine," 16 Baltimore L. Rev. 266, 278 (1987). Moreover, we have stated that the test to determine probable cause is objective and does not require a determination of the subjective intent of the police. See *Cosgrove Development Co. v. Cafferty*, 179 Conn. 670, 671, 427 A.2d 841 (1980); *State v. DeChamplain*, 179 Conn. 522, 528, 427 A.2d 1338 (1980). Therefore, a court can determine whether there is probable cause to invalidate a seizure under the plain view doctrine by looking at the facts and circumstances of the crime.

this reason, we disagree with the good faith rationale in *United States v. $10,000 in United States Currency*, supra.

The court, in *United States v. Hare*, supra, 1294, stated that *Coolidge* meant "only to condemn warrantless seizures when a warrant could have been obtained – in other words, when the exigency which normally accompanies a plain view seizure is not present." In *Coolidge*, the court stated: "Since the police knew of the presence of the automobile and planned all along to seize it, there was no 'exigent circumstance' to justify their failure to obtain a warrant." *Coolidge v. New Hampshire*, supra, 472. An exigency occurs when "the police are faced with a situation in which they observe evidence *which they could not have obtained permission to seize*, and which now is likely to disappear or be destroyed if they stop and leave to obtain a new warrant. . . . We note that the police cannot create their own exigency by simply failing to obtain a warrant until they are faced with the evidence." *United States v. Hare*, supra, 1295.

We interpret the inadvertence limitation of the plain view doctrine to mean that the police must be without probable cause to believe evidence would be discovered until they actually observe it in the course of an otherwise justified search. Id., 1294.[7]

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[7] It has been noted that "the greatest effect of the inadvertence rule will be the creation of troublesome practical problems of proof at suppression hearings. Since the burden is traditionally on those seeking exemption from the warrant requirement to show the need for it, the plurality's rule [in *Coolidge v. New Hampshire*] will foster an anomalous situation

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We next apply this interpretation and analysis of the inadvertence limitation of the plain view doctrine to the facts of this case. In determining whether the Appellate Court erred in concluding that the trial court could reasonably have found that the discovery of the keys was not inadvertent, we must review the evidence presented to the Appellate Court regarding the information available to the officers concerning the crime and the circumstances leading to the issuance of the search warrants. We note that the Appellate Court, in reviewing the action of the trial court, recognized that, because the requirement of obtaining a warrant is the rule, exceptions to which are few and zealously guarded, anyone, such as the state, claiming an exemption from that rule bears the burden of

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in which police contend they did not have probable cause to seize the object before they made their entry, while the defendant contends probable cause existed and the police could have obtained a warrant. Such a scenario would hardly encourage police truthfulness." H. Kalven, "The Supreme Court, 1970 Term," 85 Harv. L. Rev. 3, 245 (1971); see also 2 W. LaFave, Search and Seizure § 4.11(d). Whether we interpret the inadvertence limitation of the plain view doctrine as requiring the invalidation of discoveries when the police either have probable cause or have an expectation that the evidence will be discovered presents the same difficulties in the burden of proof. This doctrinal difficulty is inherent in the inadvertence limitation of the plain view doctrine. This difficulty does not, however, outweigh the protection the fourth amendment provides against planned warrantless seizures. As one scholar noted: "Probable cause is necessary in the inadvertence requirement to prevent the police from conducting a planned warrantless seizure on plain view and manipulating the warrant requirement to defeat the Fourth Amendment." J. Hall, Search and Seizure § 3:13.

proving the need for it. *State v. Zindros*, 189 Conn. 228, 456 A.2d 288 (1983).

In paragraph three of the affidavit in support of the search warrant, DeRiso and Cardozo presented the following information: "Affiants let the informant out of the unmarked police vehicle, keeping him in view at all time and watched him enter the doorway of building #5 which leads to apartment #305 of the P. T. Barnum Apartments. After a few minutes the below signed affiants observed the informant exit the same doorway and return to the same area that he was let out at. The informant told the below signed affiants that when he went to Apt. #305 he spoke to a Black female he knows as Daisy. After asking her if she had Crack she took $10.00 from him and asked him to wait. After a few minutes Dayomas, known to him as Daisy's son, told the informant to come with him. They both exited the apartment and on the way down the stairs the informant asked Dayomas where are we going and Dayomas replied that they were keeping the Crack downstairs in the Van. Informant stated that Dayomas opened the driver's side of a tan and orange, Ford Van and take out one vial and hand it to the informant. Affiants also observed the informant and the young black male go to the tan and orange Ford van which was parked just outside the door, affiants were unable to [see the] registration at this time due to van being backed-up against the wall. Informant turned over to Detective DeRiso a small vial containing a hard off white substance which he had just purchased in the above transaction. Informant was once again searched to make sure he was not carrying any other narcotics or contraband." In addition, in

paragraph six of the affidavit, he stated that the informant had "told Detective DeRiso that the orange and tan van [where] he purchased the Crack was unregistered because it had no plate on it."

On the basis of this information and information provided in several additional paragraphs in the affidavit, the issuing judge found that the officers had established probable cause to search the defendant's apartment, the tan and orange van outside the defendant's apartment, the defendant's person, and her son's person. The issuing judge gave the officers permission to search for "Cocaine, any paraphernalia used in cutting and packaging of cocaine such as scales, grinders, strainers, measuring spoons, plastic baggies, glassine bags, pyramid papers, plastic vials, lactose, any monies and or records pertaining to the sales of cocaine and any firearms used for the personal protection of drug traffickers."

The trial court could reasonably have found, as the Appellate Court concluded, that the officers had sufficient information to believe that the keys to the van would be found in the defendant's apartment to warrant a finding that the discovery of the keys was not inadvertent and that a warrant should have been obtained. In particular, we point out that the informant told the officers that the defendant's son had told him that they kept the crack downstairs in the van outside the defendant's apartment. It is reasonable for the officers to have known, based on their training, experience, and knowledge of the crime of possession of narcotics, that the owner of the crack or drugs in the van would have taken necessary precautions to protect the drugs from being stolen. At a

minimum, the owner would have locked the doors to the van. As the Appellate Court pointed out, "[DeRiso's] testimony indicated that he had reason to believe, prior to the procurement of the warrants, that the van was ordinarily locked and that the keys were kept in the defendant's apartment." *State v. Hamilton*, supra, 389. At the suppression hearing, DeRiso, in describing his observations when Dayomas and the informant went to the van, testified: " 'The son went to door [of the van]. *I believe it was locked* because he was at the door for a little while. Then he opened the door.' (Emphasis added.)" Id., 389 n.1. In addition, as indicated in the affidavit, the officers knew the van was unregistered; therefore, in order to establish a nexus between the van that contained the drugs outside the defendant's apartment and the defendant, they knew or should have known, based on their training and experience, that they had to obtain the keys to the van to establish the necessary nexus between the defendant's possession of the van and the possession of the drugs.

Moreover, the trial court could reasonably have concluded, as the Appellate Court found, that the officers entered the defendant's apartment with the specific purpose of locating the keys. In the defendant's motion for discovery and inspection, dated April 14, 1987, the defendant requested the state to disclose, inter alia, any oral declarations made "in response to interrogatories by any person then known to the defendant to be a law enforcement officer." On July 10, the state disclosed that "[t]he defendant was asked during the search of her apartment by police if the keys to a van parked outside were in the apartment. The defendant stated, 'I don't know who that

van belongs to nor do I know where the keys are.' " At the hearing on the motion to suppress, DeRiso testified on cross-examination, by defendant's counsel, that he inquired of the defendant herself about the keys shortly after he arrived at the defendant's apartment.

On the basis of this evidence, we conclude that the Appellate Court did not err in concluding that the discovery of the van keys was not inadvertent within the meaning of the plain view exception. There was sufficient evidence in the record for the Appellate Court to have concluded that the trial court could reasonably find that the officers had probable cause to believe that the keys would be discovered in the defendant's apartment. The trial court, in granting the defendant's motion to suppress, stated that "obviously the police officers were at least, loosely, aware that there was some alleged relationship between this van and the alleged activities of the accused, Daisy Hamilton. We then have what might almost be called a gratuitous statement from the state's attorney's office that a question was asked by someone of the accused, about the keys to the van almost immediately after going into the apartment for the search. . . . " The trial court concluded that, on the basis of these facts, discovery of the keys was not inadvertent. The court stated that the police officers "certainly could have asked for [the keys]. They go through a whole litany of things . . . they wished to seize, namely something that was probably taken from some other search warrant . . . instead of stopping and thinking, now is there anything else that we should ask for [that is] related to this case, they just didn't bother to do it. And under the circumstance, I don't think that the keys as seized come

in under an exception to the constitutional rights of the accused, namely, the plain view doctrine."

The plain view doctrine was not intended to be used by the police to avoid the warrant requirements in such circumstances as existed in this case. It was designed to permit the seizure of evidence that could not constitutionally be sized under a search warrant because of the lack of probable cause "and which . . . is likely to disappear or to be destroyed if they stop [the search] and leave to obtain a new warrant. This is the "exigency" which underlies the plain view doctrine, and without this exigency the entire rationale falls." *United States v. Hare,* supra, 1295.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

STATE OF CONNECTICUT *v.* DAISY HAMILTON
(6280)

SPALLONE, STOUGHTON and NORCOTT, Js.

The state, with the permission of the trial court, appealed from the judgment of that court dismissing narcotics charges against the defendant following the granting of her motion to suppress a set of keys seized by the police during a search of her apartment. The state intended to introduce those keys to link the defendant to narcotics found in an unregistered van parked near the apartment. The police had obtained warrants authorizing searches of the apartment, the van and the persons of the defendant and her son. Items listed in the warrant were cocaine, paraphernalia used in the cutting and packaging of cocaine, money and records pertaining to sales of cocaine and firearms. *Held* that the trial court did not err in holding that the seizure of the keys was illegal because they were not listed in the warrant and because their discovery was not inadvertent within the meaning of the plain view exception to the warrant requirement.

Argued October 20, 1988 – decision released January 24, 1989

Information charging the defendant with two counts of the crime of possession of narcotics with intent to sell or dispense and with the crime of possession of drug paraphernalia in a drug factory situation, brought to the Superior Court in the judicial district of Fairfield, where the court, *Stodolink, J.*, granted the defendant's motion to suppress certain evidence and rendered judgment dismissing the charges, and the state, upon granting of permission, appealed to this court. *No error.*

Frederick W. Fawcett, assistant state's attorney, with whom, on the brief, were *Donald A. Browne*, state's attorney, and *John C. Smriga*, assistant state's attorney, for the appellant (state).

Mark F. Gross, for the appellee (defendant).

SPALLONE, J. The state appeals, pursuant to General Statutes § 54-96, from the decision of the trial court granting the defendant's motion to suppress evidence and from the subsequent dismissal of the charges against the defendant.

At the hearing on the motion to suppress, evidence establishing the following facts was presented. Police obtained four search warrants authorizing searches of (1) the defendant's residence, building 5, apartment 305, of the P.T. Barnum Apartments in the city of Bridgeport, (2) a tan and orange Ford van without license plates located at the P. T. Barnum Apartments, (3) the person of the defendant's son, Dayomas Hamilton, and (4) the person of the defendant, Daisy Hamilton. Items listed in the warrants were cocaine, paraphernalia used in the cutting and packaging of cocaine, money and records pertaining to sales of cocaine, and firearms.

The police had applied for the warrants on the basis of information given to them by an informant that crack was being sold from the defendant's apartment and on the basis of their own observations of a subsequent "controlled buy" involving the defendant's son conducted with the participation of the informant. While conducting the controlled buy, Detective Richard DeReiso had observed the defendant's son escort the informant from the defendant's apartment to an unregistered Ford van

located outside, which the defendant's son unlocked and entered. DeReiso observed the defendant's son exit the van and deliver the drugs to the informant.

On February 18, 1987, DeReiso and other police officers executed the warrants. Detective Thomas Russell was assigned to search the defendant's bedroom. In the course of searching the bedroom for narcotics, Russell came across a set of keys on a shelf. He did not seize the keys at that time. Shortly thereafter, when DeReiso entered the apartment and asked whether anyone had found keys to a Ford vehicle, Russell then took the keys and gave them to DeReiso. The keys, in fact, opened the Ford van described in the search warrant.

At the hearing on the motion to suppress, defense counsel argued that the keys should be suppressed because they had not been listed in the search warrant and, therefore, the seizure of the keys was illegal. The state argued that the keys were admissible under the plain view exception to the warrant requirement. The court granted the defendant's motion to suppress, holding that the seizure of the keys was not legal under the plain view exception because the keys had not been discovered inadvertently. Thereafter, because the state represented that it had planned to show the defendant's complicity in the crime by proving that the keys to the van had been found in her apartment, the court agreed to dismiss the case with prejudice and granted the state permission to appeal.

The sole issue presented to us is whether the trial court erred in granting the defendant's motion to suppress the Ford van keys on the ground that the keys were

seized in violation of the defendant's right under the fourth amendment to the United States constitution. The state argues that the seizure was reasonable under the plain view exception.

Generally, police executing a search warrant may seize only those items specified in the warrant. *State v. Pepe*, 176 Conn. 75, 79, 405 A.2d 51 (1978), citing *Marron v. United States*, 275 U.S. 192, 196, 48 S. Ct. 74, 72 L. Ed. 231 (1927). An exception to this general rule has been recognized, however, in certain circumstances. Where a police officer has a warrant to search a given area for specified objects, and in the course of the search comes across some other article of incriminating character, the property may be seized under the plain view exception. *State v. Pepe*, supra, 79. The plain view exception will thus validate a seizure of items not specified in a warrant where (1) the initial intrusion is lawful, (2) the discovery of the evidence is inadvertent, and (3) the seizing officers have reason to believe that the seized items are evidence of a crime. Id.; *State v. DiStefano*, 7 Conn. App. 726, 730, 510 A.2d 995 (1986).

In this case, the trial court found that the keys to the Ford van seized by the police during the search had not been discovered inadvertently within the meaning of the plain view exception and that the seizure was therefore not lawful under that exception.

On appeal, the function of this court is limited to determining whether the decision of the trial court is clearly erroneous. Practice Book § 4061; *State v. Jones*, 193 Conn. 70, 79, 475 A.2d 1087 (1984). The evaluation of the credibility of witnesses testifying at a hearing on a

motion to suppress is left to the sound discretion of the trial court. *State v. Jones*, supra, 80. This court cannot find facts or draw conclusions from primary facts found, but can only review such findings to determine whether they could legally, logically and reasonably be found. *State v. Davis*, 3 Conn. App. 359, 364, 488 A.2d 837 (1985).

For a discovery to be inadvertent within the meaning of the plain view exception, police must not have anticipated the discovery or have known in advance the location of the evidence. *Texas v. Brown*, 460 U.S. 730, 739, 103 S. Ct. 1535, 75 L. Ed. 2d 502 (1983); *Coolidge v. New Hampshire*, 403 U.S. 443, 470-71, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971). A discovery is inadvertent if it occurs "without premeditation or prior intention." *United States v. $10,000 in U.S. Currency*, 780 F.2d 213 (2d Cir. 1986).

Our review of the testimony presented in this case reveals ample evidence to support the trial court's finding that the discovery of the van keys was not "inadvertent" within the meaning of the plain view exception to the warrant requirement. DeReiso's testimony indicated that he had reason to believe, prior to the procurement of the warrants, that the van was ordinarily locked[1] and that the keys were kept in the defendant's apartment.[2] There

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[1] In describing what he observed when the defendant's son and the informant were at the Ford van under his surveillance, DeReiso testified: "They went to a van that's parked right outside. The son went to the door. *I believe it was locked* because he was at the door for a little while. Then he opened the door." (Emphasis added.)

[2] DeReiso testified on cross-examination by defendant's counsel:

(Continued on following page)

was also evidence from which the trial court could conclude that DeReiso had entered the defendant's apartment with the specific purpose of locating the keys.[3] On

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"Q. [Y]ou had some reasonable assumption that the keys were in the apartment because your investigation indicated the son of the defendant had the key. Correct?

"A. Yes."

[3] DeReiso testified on cross-examination by defendant's counsel:

"Q. Now let's go to the search at Daisy Hamilton's apartment. . . .

You walked in – were you the first person in, that you remember?

"A. I don't remember.

"Q. You were the first person to talk to Daisy Hamilton. Weren't you?

"A. Probably.

"Q. And you said to Daisy Hamilton, if the keys to a van parked outside were in the apartment, didn't you?

"A. I probably asked her if they were there, yes.

"Q. That's what I'm saying. If the keys to a van – I'm quoting from the discovery – if the keys to a van parked outside were in the apartment. Right?

"A. Okay.

"Q. And her answer was, I don't know who the van belongs to, nor do I know where the keys are.

"A. That I can recall, yes.

"Q. Now that was done seven days more or less after you saw the controlled buy on February 11th?

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the basis of DeReiso's testimony, the trial court could reasonably conclude that the keys were not inadvertently

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"A. The 6th.

"Q. Ultimately, you called out to the men in the apartment has anybody found keys to a Ford van. Didn't you?

"A. I doubt if I yelled out, but I probably did talk to the guys and asked them. I asked if anybody had located keys to a Ford van. Yes.

"Q. As these men were searching, did you ask, have any of you found Ford Keys?

"A. Yes.

"Q. So it's a fair statement that when you went into the apartment, you were looking for the keys to the Ford van. Correct?

"A. Later on, yes. When she didn't give up any keys, yes.

"Q. When you went into the apartment –

"A. Yes.

"Q. – you had some reasonable assumption that the keys were in the apartment because your investigation indicated the son of the defendant had the key. Correct?

"A. Yes.

"Q. And there was a search warrant for the orange Ford van. Correct?

"A. Yes.

"Q. And when you went in, you did immediately ask Mrs. Hamilton if she had the keys to the Ford van. Correct?

(Continued on following page)

discovered in the course of the search of the defendant's apartment within the meaning of the plain view exception and that seizure of the keys was therefore not justified by that exception.

There is no error.

In this opinion the other judges concurred.

(Continued from previous page)

"A. Probably not immediately, but in our first conversation, yes.

"Q. And then after the search went underway [sic], you then alerted by asking the men, have any of you found Ford van keys. Correct?

"A. Yes.

"Q. So that they were then directed to go looking specifically for Ford van keys. Correct?

"A. I asked them if they had found any.

"Q. And that was if you found any, and if not, you will look to see if there were. Correct?

"A. If they came across them while they were searching, yes."

Supreme Court, U.S.
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89-2007

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

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STATE OF CONNECTICUT,
Petitioner

v.

DAISY HAMILTON,
Respondent

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ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

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RESPONDENT'S BRIEF IN OPPOSITION

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MARK F. GROSS, ESQUIRE
Attorney At Law
181 Middle Street
P.O. Box 1997
Bridgeport, CT 06604
(203)335-7228

WILLIAM HOLDEN, ESQUIRE
Public Defender
State of Connecticut

Counsel of Record:

ERSKINE D. McINTOSH, ESQUIRE
Assistant Public Defender
Office of the Public Defender
1061 Main Street
Bridgeport, CT 06604
(203)579-6501

Questions Presented

A. In holding that inadvertence is a requirement under the "plain view" doctrine, did the Connecticut Supreme Court do so upon an independent and an adequate state ground?

B. Did the keys, in and of themselves, have any incriminating character that was "immediately apparent" under Horton v. California, ___U.S.___, 110 S.Ct. 2301 (1990)?

C. Did the scope of the search exceed that which was permitted by the Warrants in violation of Horton ?

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NO. 89-2007

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

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STATE OF CONNECTICUT,
Petitioner

V.

DAISY HAMILTON,
Respondent

==========

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

==========

RESPONDENT'S BRIEF IN OPPOSITION

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The respondent, Daisy Hamilton, respectfully requests that the Court deny the State of Connecticut's petition for a writ of certiorari seeking review of the opinion of the Supreme Court of the State of Connecticut in this case. The opinion is reported at 214 Conn. 692 ___ A.2d ___ (1990) and is reproduced in the appendix at A.1

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment IV:

The Right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Art. I, §7 of the Constitution of State of Connecticut: (Security from searches and seizures.)

Sec. 7. The people shall be secure in their persons, houses, papers and possessions from unreasonable searches or seizures; and no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.

STATEMENT OF THE CASE

The petitioner's account of the respondent's charges, and her filing of a motion to suppress, is hereby incorporated by reference.

The events giving use to the petitioner's request for review are briefly summarized, in part, in the Connecticut Supreme Court's opinion as follows:

> On February 17, 1987, Detectives DeRiso and Miguel Cardozo of the Bridgeport Police Department obtained four search warrants authorizing the search of (1) the defendant's residence, building 5, apartment 305, of the P.T. Barnum Apartments in the City of Bridgeport; (2) a tan and orange van without license plates located at the P.T. Barnum Apartments; (3) the person of the defendant's son, Dayomas Hamilton; and (4) the person of the defendant, Daisy Hamilton. The warrant[s] listed the items to be seized as including inter alia, "[c]ocaine, any paraphernalia used in cutting and packaging of cocaine such as scales, grinders, strainers, measuring spoons, plastic baggies, glassine bags, pyramid papers, plastic vials, lactose, any monies and or records pertaining to the sales of cocaine and any firearms used for the personal protection of drug traffickers."
>
> DeRiso and Cardozo had applied for the warrants on the basis of information given to them by an informant that crack was being sold from the defendant's apartment and on the basis of their own observation on February 11, 1987, of a subsequent "controlled buy" involving the defendant's son, Dayomas, conducted with the participation of an informant.

State v. Hamilton, 214 Conn. 692, 694-95, ___ A.2d ___ (1990) (Appendix at A.3-4).

When Detective DeRiso testified at the suppression hearing concerning his observations of the controlled buy, he stated that the informant was sent to the respondent's apartment with money to purchase narcotics. After the informant reached the apartment he was escorted to a van by the respondent's son. The detective then testified:

> The son went to the door [of the van]. I believe it was locked because he was at the door for a good while. Then he opened the door. He leaned inside. He went back outside. There was a transaction conducted. I couldn't see exactly the transaction cause the door and the van were covering it. Then the informant came back to the car.

Suppression Hearing Testimony of Detective DeRiso (Appendix at A.54-55)[1]

Prior to the police securing the above mentioned warrants they were told by the informant that the orange and tan van where he had purchased the crack was unregistered and without plates. Search and Seizure Warrant (Appendix at A.85).

1. The respondent is aware that this Court generally eschews going beyond State Court factual findings. Grayson v. Harris, 267 U.S. 352, 358 (1925). However, the petitioner has claimed generally that a federal interest has been illegally subordinated by the Connecticut Supreme Court. The facts in Hamilton are intermingled with legal conclusions. The decision of

The Connecticut Supreme Court also found that:

> On February 18, 1987, DeRiso and other police officers executed the warrants. Prior to executing the warrants, however, DeRiso or Cardozo held a "briefing meeting." At that meeting, the officers were briefed about the "controlled buy" from the Ford van and told to search for narcotics. At the same time, several officers were assigned to guard the Ford van, and Detective Thomas Russell was assigned to search the defendant's bedroom. Shortly after DeRiso, who was in charge of the search party, and the other officers entered the defendant's apartment, he asked the defendant "if keys to a van parked outside were in the apartment." The defendant stated, "I don't know who that van belongs to nor do I know where the keys are."

Hamilton, 214 Conn. at 695, (Appendix at A.4).

(Emphasis supplied)

When Detective DeRiso was asked at the suppression hearing what his purpose was for inquiring about the keys, he stated:

> Well mainly we were going to search the van. In lieu of breaking into it or having to call the tow truck to come open it for us. It was easier if we had the keys.

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this Court will require independent examination of the facts to determine if the federal interest which the petitioner claims has been unduly subordinated has indeed been so. See, Ker v. California, 374 U.S. 23,33-34, (1963); Sibron v. New York, 392 U.S. 40, 63-64 (1968). To that end, respondent has attached a copy of the complete testimony of all the witnesses, two, who testified about the search and the incidents leading up thereto. The respondent only testified about her tenancy at the apartment on the day of the search. That is not included. Arguments of counsel preceding the suppression hearing are not included.

(Appendix at A.57). (Emphasis supplied)

Detective DeRiso went on to testify, under cross-examination, that when the respondent did not "give up any keys" he then sought them out.

> In the course of searching the defendant's bedroom for narcotics, Russell came across a set of keys on a shelf. He did not seize the keys at that time. Russell testified at the hearing on the motion to suppress that as he looked at these keys, they meant nothing to him "whatsoever." While Russell was still searching in the bedroom, DeRiso asked the officers whether anyone found keys to a Ford van. It was only then that Russell attached significance to the keys. Russell then took the keys off the shelf and gave them to DeRiso. DeRiso took the keys and opened the Ford van described in the warrant. In the defendant's apartment and in the Ford van, the officers found incriminating evidence including several vials of cocaine.

Hamilton, 214 Conn. at 696. Note omitted. (Appendix at A.5); Inventory of Property Seized from Van (Appendix at A.89).

Subsequently, the respondent was arrested and charged accordingly. At trial respondent moved to suppress the keys upon the grounds that they were not listed in the search warrant and therefore, the seizure was illegal. The State argued that they were admissible under the plain view doctrine. The trial court, the Appellate Court and Connecticut's Supreme Court rejected that claim upon the absence of inadvertent discovery. Hamilton, 214 Conn at 696-97; (Appendix at A. 5-6).

REASONS WHY THE PETITION SHOULD BE DENIED

A. THE QUESTION PRESENTED BY THE PETITIONER MISSTATES THE HOLDING OF THE CONNECTICUT SUPREME COURT

The question presented by the petitioner states that the Connecticut Supreme Court held that inadvertence "is a requirement under the federal 'plain view' doctrine." This simply was not, however, the holding of the Connecticut Supreme Court. Indeed, the Connecticut Supreme Court expressly stated the "uncertain status" of the inadvertence aspect under federal law because a majority of the justices on this Court have never accepted it in any judgment which it has rendered. Hamilton, 214. Conn. at 699-700; (Appendix at A.8-9). Moreover, in State v. Ruscoe, 212 Conn. 223, 563 A.2d 267 (1989), cert. denied, ___U.S.___, 110 S.Ct. 1144, 107 L.Ed.2d 1049 (1990) the Connecticut Supreme Court specifically held that there were only two requirements to be met in order to invoke the plain view doctrine under federal law. Those requirement were: "(1) the initial intrusion that enabled the police to view the item seized must have been lawful; and (2) the police must have had probable

cause to believe that these items were contraband or stolen goods." Id., 212 Conn. at 237-38, 563 A.2d at 275-76. Ruscoe was mentioned in Hamilton within the above context. Hamilton, 214 Conn. at 699; (Appendix at A.8)

Nowhere in Hamilton does the Connecticut Supreme Court say or intimate that its judgment, finding the inadvertence prerequisite, is predicated upon the U.S. Constitution's Fourth Amendment.

B. THIS COURT IS WITHOUT JURISDICTION BECAUSE THE JUDGMENT BELOW IS BASED UPON INDEPENDENT AND ADEQUATE STATE GROUNDS

The Connecticut Supreme Court relied on State law, Article I, §7 of the Connecticut Constitution, in finding an inadvertence requirement under the plain view doctrine. In ruling that the plain view doctrine had an inadvertence requirement Hamilton also relied on eight Connecticut Supreme Court opinions. Hamilton, 214 Conn. at 701; (Appendix A.10). One of the eight cases relied on is State v. Federici, 179 Conn. 46, 456 A.2d 916 (1979). In Federici the Connecticut Supreme Court ruled, inter alia, upon a plain view circumstance

under Article I,§7 of the Connecticut Constitution. Indeed a current Connecticut Supreme Court case stated that Federici's opinion regarding search and seizure was based, among other state grounds, upon Article I, §7. State v. Lamme, 216 Conn 172, 182, ___A.2d___ (1990); (Appendix at A. 23,33) Clearly, Federici adopted the Coolidge v. New Hampshire, 403 U.S. 443 (1971) requirement of inadvertency, but it did so, under Article I, §7 of Connecticut's Constitution.

From the "face" of the Hamilton opinion it is clear that the Connecticut Supreme Court found that there was no inadvertency requirement under the Fourth Amendment articulated by a majority of this Court. From the face of the opinion it is clear that the Hamilton decision based the existence of inadvertency in Connecticut only on Connecticut opinions. Hamilton, 214 Conn. at 701, (Appendix at A.10). The holding of Hamilton recognizing inadvertency never articulates that it is based upon the Fourth Amendment or any federal case. Hamilton, 214 Conn. at 702, (Appendix at A.11).

Hamilton's last eleven pages do discuss federal and state judicial decisions however, that discussion

has nothing at all to do with the existence or lack thereof of inadvertency under the plain view doctrine. Those pages are an analysis the Connecticut Supreme Court undertakes in arriving at a standard to determine the degree of expectation required to make discovery "inadvertent". Hence, the respondent submits that the state ground advanced is independent. See, Michigan v. Long, 463 U.S. 1032, 1040-41 (1983).

Further, the state ground advanced, Article I, §7 is more than adequate to uphold the judgment in Hamilton without consideration of the federal interest that the petitioner claims is implicated. Even should this Court find that Hamilton's adoption of an inadvertency requirement is erroneously based on federal law, the same judgment would be rendered upon Article I, §7 of the Connecticut Constitution if this Court corrected any such alleged error. The result therefore would be this Court returning a mere "advisory opinion". See, Longshoremen v. Davis, 476 U.S. 380, 387 (1986).

Moreover, there is an intrinsic relationship between Article I, §7 of the Connecticut Constitution and the Fourth Amendment. Despite that however,

Hamilton did not fail to separate them clearly. And certainly after Ruscoe no one can be heard to say that the Connecticut Supreme Court felt that Hamilton's decision was compelled by federal law and as a result felt obliged to "construe and apply its own law in the manner it did". Long, 436 U.S. at 1042.

Therefore, this Court should deny certiorari because the decision in Hamilton was based upon both independent and adequate state grounds, which afforded a higher level of protection for individual rights. See, e.g., Pruneyard Shopping Center v. Robins, 447 U.S. 74, 81 (1980).

B. THE KEYS IN AND OF THEMSELVES DID NOT HAVE ANY INCRIMINATING CHARACTER THAT WAS IMMEDIATELY APPARENT

Despite the Connecticut Supreme Court's ruling on the issue of inadvertence, the judgment is also supportable upon the ground that the incriminating character of the keys was not "immediately apparent" under Horton v. California, ___U.S.___, 110 S. Ct.

2301, 2308 (1990).[2] "Immediately apparent" has been interpreted to mean: Was there probable cause to associate property in plain view with criminal activity without further investigation? Arizona v. Hicks, 480 U.S. 321, 326-28 (1987).

In the case at hand, Detective Thomas Russell in searching the defendant's bedroom came across the keys initially, and did not seize them, but continued searching. He stated that despite having been told of the outdoor "controlled buy", having been told that narcotics were kept in the Ford van, and having not found narcotics in the defendants' bedroom-the keys, which he initially found, meant nothing to him and that he was just looking for narcotics. (Appendix at A.44-47, 51). Detective Russell was also aware that other people were to search the van. (Appendix at A.49).

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2. Respondent is aware that petitioner did not brief this ground, however, this Court does permit the respondent to "defend the judgment below on any ground which the law and the record permit" where the ground does not expand the judgment below. Smith v. Phillips, 455 U.S. 209, 215n.6 (1982).

Further, Detective DeRiso conceded at the hearing that he had only a mere "reasonable assumption" that the keys would be in the apartment. Moreover, he testified that it was his "belief" that keys were used to unlock the van because the defendant's son spent "a little while" at the door prior to opening it. (Appendix at A.55,66). After the keys were located in the apartment, some officer, other than Detective DeRiso, took the keys to the van and the van door was unlocked by one or more of the keys. (Appendix at A.59-60). Clearly, then, there was no probable cause to believe that those particular keys went to the van in question until after the keys were moved and inserted into the van's door key hole. Stated another way, the probative value of these keys remained uncertain until after further investigation. Horton, 110 S.Ct. at 2308, 2310.

Moreover, further proof of the lack of "immediate apparency" comes from the mouth of Detective DeRiso. When asked why he wanted the keys in the first place, he stated in sum, that it was easier than breaking into it or calling for a tow truck. Brief in Opposition, supra, p.5; (Appendix at A.57). There were no

exigent circumstances as the van was guarded by the police at all relevant times during the search. Hamilton, 214 Conn. at 695. (Appendix at A.4). Consequently, there was no "operational necessity" to justify the seizure, of the keys. Hicks, 480 U.S. at 327.

Therefore, the petition ought be denied upon the ground that the keys' inculpatory value was not immediately apparent and this ground does not expand the judgment below.

C. THE SCOPE OF THE SEARCH EXCEEDED THAT WHICH WAS PERMITTED BY THE WARRANTS

Regardless of the judgment of the Connecticut Supreme Court concerning inadvertence, its' judgment is nonetheless supportable upon the ground that the search for the keys exceeded the scope of the warrants [3] in contravention of Horton, 110 S.Ct. at 2309-10.

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3. See note 2, supra.

It has been conceded that the search and seizure warrants did not list keys as items to be seized. Hamilton, 214 Conn. at 694; (Appendix at A.3). Search and Seizure Warrant (Appendix at A.84). At the time the search of the defendant's apartment was to take place several officers were assigned to guard the van. Hamilton, 214 Conn. at 695. Pursuant to the search and seizure warrant drug paraphernalia was seized from the apartment, but no drugs. Inventory of Property Seized from Apartment (Appendix at A.88).

Once it was determined that no narcotics were found in the apartment, that the drug paraphernalia was seized and the van was seized, regardless of whether the police could "easily" gain entry to it, the search should have been terminated, in the apartment. To have expanded the search for the keys violated Horton, 110 S.Ct. at 2310.

CONCLUSION

For all the foregoing reasons, the petition for a writ of certification ought be denied.

RESPECTFULLY SUBMITTED,
Daisy Hamilton, The Respondent

By _____

Mark F. Gross, Esquire
Attorney at Law
181 Middle Street
P.O. Box 1997
Bridgeport, CT 06601
(203)335-7228

_____
William Holden, Esquire
Public Defender
State of Connecticut

Counsel of Record:

_____
Erskine D. McIntosh, Esquire
Assistant Public Defender
Office Of The Public Defender
1061 Main Street
Bridgeport, CT 06604
(203)579-6501

NO. 89-2007

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

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STATE OF CONNECTICUT,
Petitioner

v.

DAISY HAMILTON,
Respondent

==========

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF CONNECTICUT

==========

APPENDIX TO BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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sion denying the state's request to appeal, the very concept of discretion which may fairly countenance some imperfection does not then cause the action of the trial court to be the "clear and extreme abuse of discretion" that we found in *State* v. *Avcollie*, supra, 111, or a case "where injustice appears to have been done" as we said in *Avcollie*. Id.; see *State* v. *S & R Sanitation Services, Inc.*, supra. We are in the area of discretion, not discretion arbitrarily appropriated by the trial court to itself, but discretion granted to every trial judge by the legislature when it enacted General Statutes § 54-96. The nature of the exercise of discretion is such that there is just no one right answer when reviewing its exercise. Otherwise, what is the basis for according discretion to trial judges? "Discretion without a criterion for its exercise is [the] authorization of arbitrariness." *Brown* v. *Allen*, 344 U.S. 443, 496, 73 S. Ct. 397, 97 L. Ed. 469, reh. denied, 395 U.S. 946, 73 S. Ct. 827, 97 L. Ed. 1370 (1953). We have such criteria, which, when appropriately applied, lead to the conclusion that there was no abuse of discretion. Accordingly, I would affirm the trial court's granting of dismissal with prejudice and conclude that we do not have subject matter jurisdiction.

Therefore, I respectfully dissent.

STATE OF CONNECTICUT *v.* DAISY HAMILTON (13696)

PETERS, C. J., HEALEY, SHEA, GLASS and HULL, Js.

The state, with the permission of the trial court, appealed to the Appellate Court from the trial court's judgment dismissing narcotics charges against the defendant following the granting of a motion to suppress a set of keys that were seized by the police during a search of her apartment. The keys had been used to unlock a van where drugs were discovered. The Appellate Court affirmed the judgment of the trial court, and the state, on the granting of certification, appealed to this court.

Held that the Appellate Court did not err in upholding the trial court's determination that the discovery of the keys, which were not listed in the warrant to search the apartment, was not inadvertent within the meaning of the plain view exception to the warrant requirement, and that their seizure was, therefore, illegal.

Inadvertence limitation of plain view doctrine, discussed.

Argued January 3—decision released April 24, 1990

Information charging the defendant with two counts of the crime of possession of narcotics with intent to sell or dispense and with one count of the crime of possession of drug paraphernalia in a drug factory situation, brought to the Superior Court in the judicial district of Fairfield, where the court, *Stodolink, J.*, granted the defendant's motion to suppress certain evidence and rendered judgment dismissing the charges, and the state, on the granting of permission, appealed to the Appellate Court, *Spallone, Stoughton* and *Norcott, Js.*, which affirmed the trial court's decision, and the state, on the granting of certification, appealed to this court. *Affirmed.*

Frederick W. Fawcett, assistant state's attorney, with whom, on the brief, were *Donald A. Browne*, state's attorney, and *John Smriga*, assistant state's attorney, for the appellant (state).

Mark F. Gross, for the appellee (defendant).

ARTHUR H. HEALEY, J. The dispositive issue in this appeal is whether the Appellate Court erred in concluding that the discovery of certain keys used to unlock a van where drugs were stored was not inadvertent and thus did not qualify under the plain view doctrine as an exception to the warrant requirement.[1] The

[1] This court also certified a second issue which was presented as follows: "When in the course of a search pursuant to a warrant the police discover keys that may be used to unlock a van that is also authorized to be searched under the warrant, may the keys be seized for that purpose?" Because the

Appellate Court in *State* v. *Hamilton*, 17 Conn. App. 385, 552 A.2d 834 (1989), held that, on the basis of the testimony given during the pretrial hearing on the defendant's motion to suppress the van keys seized by the police in a search of her apartment, the trial court could have reasonably concluded that Detective Richard DeRiso had reason to believe, prior to the procurement of the four search warrants involved, that the van was ordinarily locked, that the keys were kept in the defendant's apartment, and that DeRiso entered the defendant's apartment with the specific purpose of locating the keys and thus the discovery of such keys was not inadvertent to come within the plain view doctrine. We granted the state's petition for certification to appeal from the Appellate Court; *State* v. *Hamilton*, 211 Conn. 804, 559 A.2d 1138 (1989); and conclude that the Appellate Court did not err in finding that the discovery of the keys was not inadvertent under the plain view doctrine.

Although the Appellate Court has set out sufficient facts, we need to present those facts relevant to the proper disposition of the issue presented. On February 17, 1987, Detectives DeRiso and Miguel Cardozo of the Bridgeport police department obtained four search warrants authorizing the search of (1) the defendant's residence, building 5, apartment 305, of the P. T. Barnum Apartments in the city of Bridgeport; (2) a tan and orange van without license plates located at the P. T. Barnum Apartments; (3) the person of the defendant's son, Dayomas Hamilton; and (4) the person of the defendant, Daisy Hamilton. The warrant listed the items to be seized as including, inter alia, "[c]ocaine, any paraphernalia used in cutting and pack-

gravamen of the defendant's motion to suppress was not the use of the keys to open the van but the introduction into evidence of proof that the keys that fit the lock on the van were found in the defendant's possession, we do not address this issue.

aging of cocaine such as scales, grinders, strainers, measuring spoons, plastic baggies, glassine bags, pyramid papers, plastic vials, lactose, any monies and or records pertaining to the sales of cocaine and any firearms used for the personal protection of drug traffickers."

DeRiso and Cardozo had applied for the warrants on the basis of information given to them by an informant that crack was being sold from the defendant's apartment and on the basis of their own observation on February 11, 1987, of a subsequent "controlled buy" involving the defendant's son, Dayomas, conducted with the participation of an informant. While conducting the "controlled buy," DeRiso and Cardozo had observed Dayomas escort the informant from the defendant's apartment to an unregistered tan and orange Ford van located outside the apartment, which Dayomas "unlocked and entered." The two officers observed Dayomas exit the van and deliver the drugs to the informant.

On February 18, 1987, DeRiso and other police officers executed the warrants. Prior to executing the warrants, however, DeRiso or Cardozo held a "briefing meeting." At that meeting, the officers were briefed about the "controlled buy" from the Ford van and told to search for narcotics. At the same time, several officers were assigned to guard the Ford van, and Detective Thomas Russell was assigned to search the defendant's bedroom. Shortly after DeRiso, who was in charge of the search party, and the other officers entered the defendant's apartment, he asked the defendant "if the keys to a van parked outside were in the apartment." The defendant stated, "I don't know who that van belongs to nor do I know where the keys are."

In the course of searching the defendant's bedroom for narcotics, Russell came across a set of keys on a shelf. He did not seize the keys at that time. Russell testified at the hearing on the motion to suppress that as he looked at these keys, they meant nothing to him "whatsoever." While Russell was still searching in the bedroom, DeRiso asked the officers whether anyone found keys to a Ford van. It was only then that Russell attached significance to the keys. Russell then took the keys off the shelf and gave them to DeRiso. DeRiso took the keys and opened the Ford van described in the warrant. In the defendant's apartment and in the Ford van, the officers found incriminating evidence including several vials of cocaine.[2] The defendant was subsequently charged by information with two counts of unlawful possession of a narcotic substance with intent to sell in violation of General Statutes § 21a-278 (b) and one count of possession of drug paraphernalia in a drug factory situation in violation of General Statutes § 21a-277 (c).

At the hearing on the motion to suppress, defense counsel argued, inter alia, that the keys should be suppressed because they had not been listed in the search warrant and, therefore, the seizure of the keys was illegal. The state argued that the keys were admissible under the plain view exception to the warrant requirement. The court orally granted the defendant's motion to suppress, holding that the seizure of the keys was not legal under the plain view exception because the keys had not been discovered inadvertently. In doing so, the trial court noted that keys are not "of themselves" contraband and are not normally tools of

[2] The officers reported on February 18, 1987, on their inventory sheet that they found only "one plastic baggie containing vials with caps, one hand held scale, one larger plastic baggie containing smaller plastic zip lock baggies." Keys were not mentioned in the inventory. It was not until after the first day of the suppression hearing that the state made a full disclosure of the exact items seized which included the set of van keys.

crimes. From this judgment the state appealed to the Appellate Court, pursuant to General Statutes § 54-96.

The Appellate Court held that the trial court could reasonably have concluded that the keys were not inadvertently discovered in the course of the search of the defendant's apartment within the meaning of the plain view exception and that the seizure of the keys was therefore not justified by that exception. *State* v. *Hamilton*, supra, 391. The court stated that "[f]or a discovery to be inadvertent within the meaning of the plain view exception, police must not have anticipated the discovery or have known in advance the location of the evidence. . . . A discovery is inadvertent if it occurs 'without premeditation or prior intention.' " Id., 389. We agree.

The fourth amendment to the United States constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." This amendment prohibits general and exploratory searches. Both state and federal courts are required to exclude evidence obtained by means of searches found violative of the fourth amendment. *Weeks* v. *United States*, 232 U.S. 383, 34 S. Ct. 341, 58 L. Ed. 652 (1914), made applicable to states in *Mapp* v. *Ohio*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961); see *State* v. *DelVecchio*, 149 Conn. 567, 572-73, 576, 182 A.2d 402 (1962).

It has been said that "searches conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz* v. *United*

States, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967); *State* v. *Zindros*, 189 Conn. 228, 236-37, 456 A.2d 288 (1983), cert. denied, 465 U.S. 1012, 104 S. Ct. 1014, 79 L. Ed. 2d 244 (1984). In *Coolidge* v. *New Hampshire*, 403 U.S. 443, 464-73, 91 S. Ct. 2022, 29 L. Ed.2d 564 (1971), a plurality of the United States Supreme Court created an exception to the warrant requirement of the fourth amendment known as the "plain view" doctrine. This doctrine "is based upon the premise that the police need not ignore incriminating evidence in plain view while they are operating within the parameters of a valid search warrant or are otherwise entitled to be in a position to view the items seized." *State* v. *Ruth*, 181 Conn. 187, 193, 435 A.2d 3 (1980). A plain view seizure is reasonable under the fourth amendment if the police: (1) were lawfully on the premises and engaged in a lawful activity; (2) discovered the evidence inadvertently; and (3) have probable cause to believe there is a reasonable relationship between the evidence seized and the criminal behavior under investigation. *Texas* v. *Brown*, 460 U.S. 730, 741-43, 103 S. Ct. 1535, 75 L. Ed. 2d 502 (1983); *Coolidge* v. *New Hampshire*, supra, 466; *State* v. *Reddick*, 207 Conn. 323, 335, 541 A.2d 1209 (1988); *State* v. *Magnano*, 204 Conn. 259, 271, 528 A.2d 760 (1987); *State* v. *Altrui*, 188 Conn. 161, 179, 448 A.2d 837 (1982); *State* v. *Graham*, 186 Conn. 437, 443-44, 441 A.2d 857 (1982); *State* v. *Federici*, 179 Conn. 46, 56, 425 A.2d 916 (1979); *State* v. *Onofrio*, 179 Conn. 23, 39-40, 425 A.2d 560 (1979); *State* v. *Pepe*, 176 Conn. 75, 79-80, 405 A.2d 51 (1978); *State* v. *Krause*, 163 Conn. 76, 82-83, 301 A.2d 234 (1972); W. LaFave, Search and Seizure § 4.11 (a). In this case, in view of the certified question, we only address the inadvertence limitation of the plain view doctrine.

The plurality in, *Coolidge* v. *New Hampshire*, supra, 469-71, in setting out the inadvertence limitation,

stated: "The rationale of the exception to the warrant requirement . . . is that a plain-view seizure will not turn an initially valid (and therefore limited) search into a 'general' one, while the inconvenience of procuring a warrant to cover an inadvertent discovery is great. But where the discovery is anticipated, where the police know in advance the location of the evidence and intend to seize it, the situation is altogether different. The requirement of a warrant to seize imposes no inconvenience whatever, or at least none which is constitutionally cognizable in a legal system that regards warrantless searches as '*per se* unreasonable' in the absence of 'exigent circumstances.' "

The state contends, however, that there is no inadvertency requirement under the plain view doctrine. It asserts that twelve years after *Coolidge* was decided, the United States Supreme Court in *Texas* v. *Brown*, supra, was divided as to whether inadvertency was a requirement.

In *State* v. *Ruscoe*, 212 Conn. 223, 237 n.8, 563 A.2d 267 (1989), cert. denied, U.S. , 110 S. Ct. 1144, 107 L. Ed. 2d 1049 (1990), we noted "the uncertain status of the 'inadvertence' aspect of the plain view doctrine." In *Ruscoe*, we recognized that "[t]his 'requirement' of the plain view doctrine has never been accepted by a judgment supported by a majority of the United States Supreme Court." Id.; see *Arizona* v. *Hicks*, 480 U.S. 321, 330, 107 S. Ct. 1149, 94 L. Ed. 2d 347 (1987) (White, J., concurring) (requirement of inadvertency never accepted by a majority of the court), (O'Connor, J., with Rehnquist, C. J., and Powell, J., dissenting) (though inadvertency requirements of *Coolidge* never expressly adopted by the majority of the court, *Coolidge* plurality decision should be point of reference for further discussion of the issue); *Texas* v. *Brown*, supra, 743 (plurality opinion) ("[w]hatever may be the final disposition of the 'inadvertence' ele-

ment of 'plain view,' it clearly was no bar to the seizure here"), (White, J., concurring) (no inadvertency requirement), (Powell, J., with Blackmun, J., concurring) (no reason to criticize *Coolidge* because generally accepted for more than a decade); *Washington* v. *Chrisman*, 455 U.S. 1, 5-6, 102 S. Ct. 812, 70 L. Ed. 2d 778 (1982) (omitted as a separate requirement); *Coolidge* v. *New Hampshire*, supra (plurality opinion) (inadvertency requirement endorsed), (Black, J., with Blackmun, J., dissenting) (no inadvertency required for plain view), 517 (White, J., with Burger, C. J., dissenting) (criticizing inadvertency requirement as "punitive and extravagant application of the exclusionary rule").

Although a majority of the United States Supreme Court has not adopted the inadvertence aspect, most lower courts have adopted it as an essential element of the plain view doctrine. See *Wolfenbarger* v. *Williams*, 826 F.2d 930 (10th Cir. 1987); *Perlman* v. *Chicago*, 801 F.2d 262, 266 (7th Cir. 1986), cert. denied, 480 U.S. 906, 107 S. Ct. 1349, 94 L. Ed. 2d 520 (1987); *United States* v. *Newton*, 788 F.2d 1392, 1394-95 (8th Cir. 1986), cert. denied, U.S. , 109 S. Ct. 841, 102 L. Ed. 2d 973 (1989); *United States* v. *Fawole*, 785 F.2d 1141, 1146-47 (4th Cir. 1986); See *United States* v. *$10,000 in United States Currency*, 780 F.2d 213, 218 (2d Cir. 1986); *United States* v. *Liberti*, 616 F.2d 34, 36 (2d Cir.), cert. denied, 446 U.S. 952, 100 S. Ct. 2918, 64 L. Ed. 2d 808 (1980); *United States* v. *Hare*, 589 F.2d 1291, 1294 (6th Cir. 1979); *United States* v. *Worthington*, 544 F.2d 1275, 1280 (5th Cir.), cert. denied, 434 U.S. 817, 98 S. Ct. 55, 54 L. Ed. 2d 72 (1977); *Commonwealth* v. *Cefalo*, 381 Mass. 319, 409 N.E.2d 719 (1980); *State* v. *Clark*, 592 S.W.2d 709 (Mo. 1979), cert. denied, 449 U.S. 847, 101 S. Ct. 132, 66 L. Ed. 2d 57 (1980); *State* v. *Richards*, 294 N.C. 474, 242 S.E.2d 344 (1978); *Commonwealth* v. *Millard*, 273 Pa. Super. 523, 417 A.2d 1171 (1979); see also W. LaFave, supra,

§ 4.11 (d), p. 350 and cases cited therein; W. Ringel, Searches and Seizures, Arrests and Confessions § 6.5 (a) (2) and cases cited therein; but see *North* v. *Superior Court*, 104 Cal. Rptr. 833, 502 P.2d 1305 (1972); *State* v. *Pontier*, 95 Idaho 707, 518 P.2d 969 (1974); State v. King, 191 N.W.2d 650 (Iowa 1971), cert. denied, 406 U.S. 908, 92 S. Ct. 1617, L. Ed. 2d 819 (1972); *State* v. *Romero*, 660 P.2d 715 (Utah 1983).

This court has adopted the inadvertence limitation and has consistently applied it as an element of the plain view doctrine. See *State* v. *Reddick*, supra; *State* v. *Altrui*, supra; *State* v. *Graham*, supra; *State* v. *Federici*, supra; *State* v. *Pepe*, supra; *State* v. *Watson*, 165 Conn. 577, 587, 345 A.2d 532 (1973); *State* v. *Krause*, supra. In *State* v. *Couture*, 194 Conn. 530, 547, 482 A.2d 300 (1984), cert. denied, 469 U.S. 1192, 105 S. Ct. 967, 83 L. Ed. 2d 971 (1985), we held, however, that "inadvertence is not required if the items seized fall under the category of contraband, stolen property or objects dangerous in themselves." See *State* v. *Ruscoe*, supra, 238 (contraband involved). In *Coolidge* v. *New Hampshire*, supra, 472, Justice Stewart, writing for the plurality, carefully pointed out that *Coolidge* did not involve contraband, stolen goods or objects dangerous in themselves. He stated that "to extend the scope of such an intrusion to the seizure of objects—not contraband nor stolen nor dangerous in themselves—which the police know in advance they will find in plain view and intend to seize, would fly in the face of the basic rule that no amount of probable cause can justify a warrantless seizure." Id., 471.[3] A number of lower courts

[3] In Justice White's dissent and concurrence in *Coolidge* v. *New Hampshire*, 403 U.S. 443, 519, 91 S. Ct. 2022, 29 L. Ed. 2d 564, reh. denied, 404 U.S. 874, 92 S. Ct. 26, 30 L. Ed. 2d 120 (1971), he stated: "Apparently, contraband, stolen or dangerous materials may be seized when discovered in the course of an otherwise authorized search even if the discovery is fully anticipated and a warrant could have been obtained." Moreover, Justice

have also interpreted *Coolidge* to have held the inadvertence limitation inapplicable to contraband, stolen goods and objects dangerous in themselves. See *United States* v. *Johnson*, 707 F.2d 317, 321 (8th Cir. 1983); *United States* v. *Vargas*, 621 F.2d 55, 56 (2d Cir.), cert. denied, 449 U.S. 854, 101 S. Ct. 150, 66 L. Ed. 2d 68 (1980); see also *United States* v. *Freeman*, 685 F.2d 942, 954 n.7 (5th Cir. 1982), and cases cited therein; W. LaFave, supra.

This case does not involve the seizure of contraband, stolen goods, or objects dangerous in themselves. The item that was allegedly unconstitutionally seized was a set of keys. Therefore, on the basis of this court's adoption and application of the plain view doctrine, the inadvertent discovery limitation of the plain view doctrine is applicable to the seizure in this case.

It has been noted that "[t]he most serious problem with the plurality's approach [in *Coolidge*] to plain view is that Justice Stewart nowhere defined the degree of expectation required to make a discovery by the police inadvertent." H. Kalven, "The Supreme Court, 1970 Term," 85 Harv. L. Rev. 3, 244 (1971). The court in *Coolidge* simply stated "where the discovery is anticipated, where the police know in advance the location of the evidence and intend to seize it," the plain view doctrine does not apply. *Coolidge* v. *New Hampshire*, supra, 470. In *State* v. *Pepe*, supra, 79–80, this court stated: "The police need not be caught completely by surprise for a discovery to be inadvertent, so long as they did not anticipate the discovery or know in advance the location of evidence and intent to seize."[4]

Black, who also dissented on this point, apparently construed the plurality opinion in the same manner. Id., 507 n.4; see also *United States* v. *Liberti*, 616 F.2d 34, 36 (2d. Cir.), cert. denied, 446 U.S. 952, 100 S. Ct. 2918, 64 L. Ed. 2d 808 (1980).

[4] *State* v. *Pepe*, 176 Conn. 75, 80, 405 A.2d 51 (1978), involved stolen goods. After our decision in *Pepe*, we held that "inadvertence is not required if

If the police were completely surprised by their discovery of the evidence seized in plain view, there is no question that the discovery is inadvertent. The question of whether a discovery is inadvertent arises, however, where the police anticipated finding the evidence and had reason to believe the evidence would be found but failed particularly to describe that item in the search warrant.

In *United States* v. *Hare*, supra, 1294, the Sixth Circuit Court of Appeals provides an analysis of the inadvertence limitation of the plain view doctrine that we find persuasive. In *Hare*, the court interpreted "inadvertence" in the context of the plain view doctrine to mean "that the police must be without probable cause to believe evidence would be discovered until they actually observe it in the course of an otherwise justified search." The court reasoned that: "There are many times when a police officer may 'expect' to find evidence in a particular place, and that expectation may range from a weak hunch to a strong suspicion. However, the Fourth Amendment prohibits either a warrant to issue or a search based on such an expectation. Yet if in the course of an intrusion wholly authorized by another legitimate purpose, that hunch or suspicion is confirmed by an actual observation, the police are in precisely the same position as if they were taken wholly by surprise by the discovery. The same exigent circumstances exist, and no warrant could have been obtained before the discovery." Id.

The court further stated: "At first, it may seem illogical to hold that police who lawfully enter premises and

the items seized fall under the category of contraband, stolen property or objects dangerous in themselves." *State* v. *Couture*, 194 Conn. 530, 547, 482 A.2d 300 (1984), cert. denied, 469 U.S. 1192, 105 S. Ct. 967, 83 L. Ed. 2d 971 (1985); see *State* v. *Rascoe*, 212 Conn. 223, 237 n.8, 563 A.2d 267 (1989), cert. denied, U.S. , 110 S. Ct. 1144, 107 L. Ed. 2d 1049 (1990).

discover evidence which is not described in their warrant, in the course of a properly limited search, may not seize it if they *knew* they would find it before entering, but may seize it if they only thought they might find it, or if they discover it unexpectedly. After all, the line between suspicion and probable cause is seldom very clear. It makes sense, however, if the fact is kept in mind that a warrant is normally required before a search can be conducted or a seizure effectuated, and if it is remembered that the only reason plain view seizures are permitted at all is because the intrusion which the Fourth Amendment seeks to guard against has already lawfully occurred, and the police are faced with a situation in which they observe evidence which they could not have obtained permission to seize, and which now is likely to disappear or be destroyed if they stop and leave to obtain a new warrant. This is the 'exigency' which underlies the plain view doctrine, and without this exigency the entire rationale falls. We note that the police cannot create their own exigency by simply failing to obtain a warrant until they are faced with the evidence." Id., 1295.[5]

[5] For other jurisdictions adopting the analysis of "inadvertence" in *United States* v. *Hare*, 589 F.2d 1291 (6th Cir. 1979), see, e.g., *People* v. *Stoppel*, 637 P.2d 384 (Colo. 1981) (adopting the "reasoned and thorough evaluation of inadvertence"); see *State* v. *Howard*, 448 So. 2d 713, 718 (La. App. 1984); *People* v. *Myshock*, 116 Mich. App. 72, 321 N.W.2d 849 (1982) *State* v. *Clark*, 592 S.W.2d 709 (Mo. 1980), cert. denied, 449 U.S. 847, 101 S. Ct. 132, 66 L. Ed. 2d 57 (1980); *State* v. *White*, 322 N.C. 770, 370 S.E.2d 390, cert. denied, U.S. , 109 S. Ct. 399, 102 L. Ed. 2d 387 (1988).

One commentator has noted that while courts and commentators have not agreed on the scope of the "inadvertence" element of the plain view doctrine, "the better position seems to be that a discovery is inadvertent even if the police suspected they would find an item, unless they had probable cause to obtain a warrant to search for it. See, e.g. . . . *United States* v. *Hare*, [supra,] 1294 . . . ." L. Bloom, "The Law Office Search: An Emerging Problem and Some Suggested Solutions," 69 Georgetown L.J. 1, 85–86 n. 439 (1980).

The Appellate Court, in stating that "[a] discovery is inadvertent if it occurs 'without premeditation or prior intention,' " quoted *United States* v. *$10,000 in United States Currency*, supra, in which the Second Circuit Court of Appeals broadly interpreted the inadvertence limitation. *State* v. *Hamilton*, supra, 389. In that case, the court stated that the "focus of the [suppression] hearing is better directed toward the good faith of the police action when fully reviewed" instead of focusing on whether the police had probable cause to know the evidence would be discovered. Id., 219. The court stated that "where the proof indicates that the police have conducted a thorough investigation of the crime and the means available to prove it and the search is conducted in a manner reasonable in duration and intensity, the property seized may be found to be inadvertently discovered in plain view." Id.

The court, in rejecting a probable cause analysis, stated: "Nor is the existence of probable cause, unrecognized by the police, sufficient to bar discovery as not inadvertent. Such a purely 'objective' approach would exclude important evidence simply because the police 'by oversight or acting from an abundance of caution or out of a misapprehension of what it takes to obtain a search warrant covering that evidence, failed to include that item in the warrant executed.' 2 W. LaFave, [supra,] § 4.11 at 181." Id., 218. We do not find persuasive the Second Circuit Court of Appeals' interpretation of the inadvertence aspect of the plain view doctrine.

The Second Circuit's interpretation of "inadvertence" permits a warrantless seizure of an item even though the police know the location of the item and intend to seize it, so long as the police acted in good faith in executing the warrant. We believe that this interpretation is contrary to what the plurality intended the inadvertence limitation to mean. In *Coolidge*, the

plurality stated: "If the initial intrusion is bottomed upon a warrant that fails to mention a particular object, *though the police know its location and intend to seize it*, then there is a violation of the express constitutional requirement of 'Warrants . . . particularly describing . . . [the] things to be seized.' . . . [T]o extend the scope of such an intrusion to the seizure of objects . . . which the police know in advance they will find in plain view and intend to seize, would fly in the face of the basic rule that no amount of probable cause can justify a warrantless seizure." *Coolidge* v. *New Hampshire*, supra, 471. It is apparent that *Coolidge* does not support a good faith standard but rather it was intended to prevent a plain view seizure when the police knew in advance the location of an item and intended to seize it. See H. Wallin, "The Uncertain Scope of the Plain View Doctrine," 16 Baltimore L. Rev. 266, 278 (1987). The court in *$10,000 in United States Currency* permits, however, such a seizure so long as the seizing officer acted in good faith in executing the warrant. The court stated, "even if the police in good faith failed to mention an item in the warrant, the manner in which the search was actually conducted can render discovery no longer inadvertent." *United States* v. *$10,000 in United States Currency*, supra, 219.

While it is true that the court in *Coolidge* v. *New Hampshire*, supra, 470, was concerned with turning "an initially valid (and therefore limited) search into a 'general one,' " that concern was based on the fourth amendment requirement that "warrants shall . . . particularly [describe] the place to be searched, and the persons or things to be seized." U.S. Const., amend. IV. "The [particularity requirement of the fourth amendment] was a direct response to the evil of the general warrant, one of the abuses by the Crown that led to the American revolution: '[T]he problem [posed by the general warrant] is not that of intrusion *per se*,

but of a general exploratory rummaging in a person's belongings . . . . [The fourth amendment addressed the problem] by requiring a "particular description" of the things to be seized.' *Andresen* v. *Maryland*, 427 U.S. 463, 480, 96 S. Ct. 2737, 2748, 49 L. Ed. 2d 627 (1976) (quoting *Coolidge* v. *New Hampshire*, [supra, 467])." *United States* v. *Shoffner*, 826 F.2d 619, 630 (7th Cir. 1987). If the police know in advance that the evidence will be discovered and they intend to seize it, failure to include that evidence in the search warrant violates the particularity requirement of the fourth amendment regardless of any claimed good faith of the officer.[6] For this reason, we disagree with the good faith rationale in *United States* v. *$10,000 in United States Currency*, supra.

The court, in *United States* v. *Hare*, supra, 1294, stated that *Coolidge* meant "only to condemn warrantless seizures when a warrant could have been obtained—in other words, when the exigency which normally accompanies a plain view seizure is not present." In *Coolidge*, the court stated: "Since the police knew of the presence of the automobile and planned all along to seize it, there was no 'exigent circumstance' to justify their

[6] One commentator has noted that "[c]ourts relying on a good faith criterion must examine the subjective intent of [the] intruding officers. This determination entails inquiry into whether the failure to list the evidence was deliberate or accidental, whether the invasion was undertaken with the expectation that these objects would be seized, and whether all the officers were operating under the same misapprehension. A more practical guide for determining whether seizures are inadvertent is the familiar and workable probable cause standard." H. Wallin, "The Uncertain Scope of the Plain View Doctrine," 16 Baltimore L. Rev. 266, 278 (1987). Moreover, we have stated that the test to determine probable cause is objective and does not require a determination of the subjective intent of the police. See *Cosgrove Development Co.* v. *Cafferty*, 179 Conn. 670, 671, 427 A.2d 841 (1980); *State* v. *DeChamplain*, 179 Conn. 522, 528, 427 A.2d 1338 (1980). Therefore, a court can determine whether there is probable cause to invalidate a seizure under the plain view doctrine by looking at the facts and circumstances of the crime.

failure to obtain a warrant." *Coolidge* v. *New Hampshire*, supra, 472. An exigency occurs when "the police are faced with a situation in which they observe evidence *which they could not have obtained permission to seize*, and which now is likely to disappear or be destroyed if they stop and leave to obtain a new warrant. . . . We note that the police cannot create their own exigency by simply failing to obtain a warrant until they are faced with the evidence." *United States* v. *Hare*, supra, 1295.

We interpret the inadvertence limitation of the plain view doctrine to mean that the police must be without probable cause to believe evidence would be discovered until they actually observe it in the course of an otherwise justified search. Id., 1294.[7]

We next apply this interpretation and analysis of the inadvertence limitation of the plain view doctrine to the facts of this case. In determining whether the

[7] It has been noted that "the greatest effect of the inadvertence rule will be the creation of troublesome practical problems of proof at suppression hearings. Since the burden is traditionally on those seeking exemption from the warrant requirement to show the need for it, the plurality's rule [in *Coolidge* v. *New Hampshire*] will foster an anomalous situation in which police contend they did not have probable cause to seize the object before they made their entry, while the defendant contends probable cause existed and the police could have obtained a warrant. Such a scenario would hardly encourage police truthfulness." H. Kalven, "The Supreme Court, 1970 Term," 85 Harv. L. Rev. 3, 245 (1971); see also 2 W. LaFave, Search and Seizure § 4.11 (d). Whether we interpret the inadvertence limitation of the plain view doctrine as requiring the invalidation of discoveries when the police either have probable cause or have an expectation that the evidence will be discovered presents the same difficulties in the burden of proof. This doctrinal difficulty is inherent in the inadvertence limitation of the plain view doctrine. This difficulty does not, however, outweigh the protection the fourth amendment provides against planned warrantless seizures. As one scholar noted: "Probable cause is necessary in the inadvertence requirement to prevent the police from conducting a planned warrantless seizure on plain view and manipulating the warrant requirement to defeat the Fourth Amendment." J. Hall, Search and Seizure § 3:13.

Appellate Court erred in concluding that the trial court could reasonably have found that the discovery of the keys was not inadvertent, we must review the evidence presented to the Appellate Court regarding the information available to the officers concerning the crime and the circumstances leading to the issuance of the search warrants. We note that the Appellate Court, in reviewing the action of the trial court, recognized that, because the requirement of obtaining a warrant is the rule, exceptions to which are few and zealously guarded, anyone, such as the state, claiming an exemption from that rule bears the burden of proving the need for it. *State* v. *Zindros*, 189 Conn. 228, 456 A.2d 288 (1983).

In paragraph three of the affidavit in support of the search warrant, DeRiso and Cardozo presented the following information: "Affiants let the informant out of the unmarked police vehicle, keeping him in view at all time and watched him enter the doorway of building #5 which leads to apartment #305 of the P. T. Barnum Apartments. After a few minutes the below signed affiants observed the informant exit the same doorway and return to the same area that he was let out at. The informant told the below signed affiants that when he went to Apt. #305 he spoke to a Black female he knows as Daisy. After asking her if she had Crack she took $10.00 from him and asked him to wait. After a few minutes Dayomas, known to him as Daisy's son, told the informant to come with him. They both exited the apartment and on the way down the stairs the informant asked Dayomas where are we going and Dayomas replied that they were keeping the Crack downstairs in the Van. Informant stated that Dayomas opened the driver's side of a tan and orange, Ford Van and take out one vial and hand it to the informant. Affiants also observed the informant and the young black male go to the tan and orange Ford van which was parked just

outside the door, affiants were unable to [see the] registration at this time due to van being backed-up against the wall. Informant turned over to Detective DeRiso a small vial containing a hard off white substance which he had just purchased in the above transaction. Informant was once again searched to make sure he was not carrying any other narcotics or contraband." In addition, in paragraph six of the affidavit, he stated that the informant had "told Detective DeRiso that the orange and tan van [where] he purchased the Crack was unregistered because it had no plate on it."

On the basis of this information and information provided in several additional paragraphs in the affidavit, the issuing judge found that the officers had established probable cause to search the defendant's apartment, the tan and orange van outside the defendant's apartment, the defendant's person, and her son's person. The issuing judge gave the officers permission to search for "Cocaine, any paraphernalia used in cutting and packaging of cocaine such as scales, grinders, strainers, measuring spoons, plastic baggies, glassine bags, pyramid papers, plastic vials, lactose, any monies and or records pertaining to the sales of cocaine and any firearms used for the personal protection of drug traffickers."

The trial court could reasonably have found, as the Appellate Court concluded, that the officers had sufficient information to believe that the keys to the van would be found in the defendant's apartment to warrant a finding that the discovery of the keys was not inadvertent and that a warrant should have been obtained. In particular, we point out that the informant told the officers that the defendant's son had told him that they kept the crack downstairs in the van outside the defendant's apartment. It is reasonable for the officers to have known, based on their training, experi-

ence, and knowledge of the crime of possession of narcotics, that the owner of the crack or drugs in the van would have taken necessary precautions to protect the drugs from being stolen. At a minimum, the owner would have locked the doors to the van. As the Appellate Court pointed out, "[DeRiso's] testimony indicated that he had reason to believe, prior to the procurement of the warrants, that the van was ordinarily locked and that the keys were kept in the defendant's apartment." *State* v. *Hamilton*, supra, 389. At the suppression hearing, DeRiso, in describing his observations when Dayomas and the informant went to the van, testified: " 'The son went to door [of the van]. *I believe it was locked* because he was at the door for a little while. Then he opened the door.' (Emphasis added.)" Id., 389 n.1. In addition, as indicated in the affidavit, the officers knew the van was unregistered; therefore, in order to establish a nexus between the van that contained the drugs outside the defendant's apartment and the defendant, they knew or should have known, based on their training and experience, that they had to obtain the keys to the van to establish the necessary nexus between the defendant's possession of the van and the possession of the drugs.

Moreover, the trial court could reasonably have concluded, as the Appellate Court found, that the officers entered the defendant's apartment with the specific purpose of locating the keys. In the defendant's motion for discovery and inspection, dated April 14, 1987, the defendant requested the state to disclose, inter alia, any oral declarations made "in response to interrogatories by any person then known to the defendant to be a law enforcement officer." On July 10, the state disclosed that "[t]he defendant was asked during the search of her apartment by police if the keys to a van parked outside were in the apartment. The defendant stated, 'I don't know who that van belongs to nor do

I know where the keys are.' " At the hearing on the motion to suppress, DeRiso testified on cross-examination, by defendant's counsel, that he inquired of the defendant herself about the keys shortly after he arrived at the defendant's apartment.

On the basis of this evidence, we conclude that the Appellate Court did not err in concluding that the discovery of the van keys was not inadvertent within the meaning of the plain view exception. There was sufficient evidence in the record for the Appellate Court to have concluded that the trial court could reasonably find that the officers had probable cause to believe that the keys would be discovered in the defendant's apartment. The trial court, in granting the defendant's motion to suppress, stated that "obviously the police officers were at least, loosely, aware that there was some alleged relationship between this van and the alleged activities of the accused, Daisy Hamilton. We then have what might almost be called a gratuitous statement from the state's attorney's office that a question was asked by someone of the accused, about the keys to the van almost immediately after going into the apartment for the search . . . . " The trial court concluded that, on the basis of these facts, discovery of the keys was not inadvertent. The court stated that the police officers "certainly could have asked for [the keys]. They go through a whole litany of things . . . they wished to seize, namely something that was probably taken from some other search warrant . . . instead of stopping and thinking, now is there anything else that we should ask for [that is] related to this case, they just didn't bother to do it. And under the circumstance, I don't think that the keys as seized come in under an exception to the constitutional rights of the accused, namely, the plain view doctrine."

The plain view doctrine was not intended to be used by the police to avoid the warrant requirements in such

circumstances as existed in this case. It was designed to permit the seizure of evidence that could not constitutionally be seized under a search warrant because of the lack of probable cause "and which . . . is likely to disappear or be destroyed if they stop [the search] and leave to obtain a new warrant. This is the "exigency" which underlies the plain view doctrine, and without this exigency the entire rationale falls." *United States* v. *Hare*, supra, 1295.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

The judgment of the Appellate Court is reversed and the case is remanded to that court for further proceedings consistent with this opinion.

In this opinion the other justices concurred.

STATE OF CONNECTICUT *v.* RICHARD LAMME (13792)

PETERS, C. J., SHEA, GLASS, HULL and BORDEN, Js.

Convicted of the crimes of operating a motor vehicle while under the influence of intoxicating liquor and operating a motor vehicle while his license was under suspension, the defendant appealed to the Appellate Court challenging the admissibility of evidence concerning his performance on certain roadside sobriety tests. The Appellate Court affirmed the judgment of the trial court, and, on the granting of certification, the defendant appealed to this court. *Held* that the defendant could not prevail on his claim that because warrants cannot be issued without a showing of probable cause, the phrase "clearly warranted by law" in article first, § 9 of the Connecticut constitution mandates a universal probable cause standard whenever the police restrain personal freedom to any degree; the principles of fundamental fairness that are the

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(1985); *State* v. *Carter*, 322 N.C. 709, 724, 370 S.E.2d 553 (1988); on statutory grounds; *Commonwealth* v. *Upton*, 394 Mass. 363, 370 n.5, 476 N.E.2d 548 (1985); *Dees* v. *State*, 722 S.W.2d 209, 213–14 (Tex. App. 1986); but see *Lighter* v. *State*, 741 S.W.2d 568, 569 (Tex. App. 1987) (noting statutory change adopting the exception); and on the basis of opinions issued by a higher state court. *State* v. *Grauvien*, 123 Wis. 2d 428, 431–32, 367 N.W.2d 816 (Ct. App. 1985); but see *State* v. *Brady*, 130 Wis. 2d 443, 454, 388 N.W.2d 151 (Wis. 1986) (noting that adoption of the exception is still an open question). On the other hand, the good faith exception has been accepted and applied in a number of state court opinions. See *People* v. *Fernandez*, 212 Cal. App. 3d 984, 989–90, 261 Cal. Rptr. 29 (1989); *State* v. *Bernie*, 472 So. 2d 1243, 1248 (Fla. App. 1985), approved, 521 So. 2d 988 (Fla. 1988); *State* v. *Schaffer*, 107 Idaho 812, 821, 693 P.2d 458 (Ct. App. 1984); *People* v. *Stewart*, 104 Ill. 2d 463, 477, 473 N.E.2d 1227 (1984), cert. denied, 471 U.S. 1120, 105 S. Ct. 2368, 86 L. Ed. 2d 267 (1985); *Mers* v. *State*, 482 N.E.2d 778, 783 (Ind. App. 1985); *State* v. *Huber*, 704 P.2d 1004, 1011 (Kan. App. 1985); *State* v. *Shannon*, 472 So. 2d 286, 291 (La. App.), cert. denied, 476 So. 2d 349 (La. 1985); *State* v. *Sweeney*, 701 S.W.2d 420, 426 (Mo. 1985); *State* v. *Wilmoth*, 22 Ohio St. 3d 251, 266–67, 490 N.E.2d 1236 (1986); *Commonwealth* v. *Edmunds*, 373 Pa. Super. 384, 392–93, 541 A.2d 368, appeal granted, 520 Pa. 595, 552 A.2d 250 (1988).

hallmarks of due process permit a brief investigatory detention, even in the absence of probable cause, if the police have a reasonable and articulable suspicion that a person has committed or is about to commit a crime.

Argued May 31—decision released August 7, 1990

Substitute information charging the defendant with the crimes of operating a motor vehicle while under the influence of intoxicating liquor and operating a motor vehicle with a suspended driver's license, brought to the Superior Court in the judicial district of Fairfield, geographical area number two, and tried to the jury before *Geen, J.*; verdict and judgment of guilty, from which the defendant appealed to the Appellate Court, *Dupont, C. J., Stoughton* and *Norcott, Js.*, which affirmed the decision of the trial court, and the defendant, on the granting of certification, appealed to this court. *Affirmed.*

James J. Ruane, for the appellant (defendant).

Mitchell S. Brody, assistant state's attorney, with whom, on the brief, were *John J. Kelly*, chief state's attorney, and *Donald A. Browne*, state's attorney, for the appellee (state).

PETERS, C. J. The sole issue in this appeal is whether the provisions of article first, § 9,[1] of the Connecticut constitution preclude the police from detaining a person for limited investigative purposes without having probable cause to arrest. The state charged the defendant, Richard Lamme, with the operation of a motor vehicle while under the influence of intoxicating liquor and with the operation of a motor vehicle while his license was under suspension, in violation of General

[1] Article first, § 9 of the Connecticut constitution provides: "No person shall be arrested, detained or punished, except in cases clearly warranted by law."

Statutes §§ 14-227a (a) and 14-215 (a), respectively.[2] The defendant unsuccessfully moved, prior to trial, for the suppression of evidence concerning his performance of field sobriety tests. The trial court rendered judgment against the defendant on a jury verdict finding him guilty as charged, and the Appellate Court affirmed that judgment in *State* v. *Lamme*, 19 Conn. App. 594, 563 A.2d 1372 (1989). This court granted certification to consider the merits of his novel state constitutional claim, and we now affirm.[3]

[2] "[General Statutes] § 14-227a. OPERATION WHILE UNDER THE INFLUENCE OF LIQUOR OR DRUG OR WHILE IMPAIRED BY LIQUOR. (a) OPERATION WHILE UNDER THE INFLUENCE. No person shall operate a motor vehicle while under the influence of intoxicating liquor or any drug or both. A person commits the offense of operating a motor vehicle while under the influence of intoxicating liquor or any drug or both if he operates a motor vehicle on a public highway of this state or on any road of a district organized under the provisions of chapter 105, a purpose of which is the construction and maintenance of roads and sidewalks, or on any private road on which a speed limit has been established in accordance with the provisions of section 14-218a, or in any parking area for ten or more cars or on any school property (1) while under the influence of intoxicating liquor or any drug or both or (2) while the ratio of alcohol in the blood of such person is ten-hundredths of one per cent or more of alcohol, by weight."

"[General Statutes] § 14-215. OPERATION WHILE REGISTRATION OR LICENSE IS REFUSED, SUSPENDED OR REVOKED. (a) No person to whom an operator's license has been refused, or whose operator's license or right to operate a motor vehicle in this state has been suspended or revoked, shall operate any motor vehicle during the period of such refusal, suspension or revocation. No person shall operate or cause to be operated any motor vehicle, the registration of which has been refused, suspended or revoked, or any motor vehicle, the right to operate which has been suspended or revoked."

[3] In the defendant's appeal to the Appellate Court, he unsuccessfully advanced three grounds for overturning his conviction. In addition to his challenge, under both the federal and the state constitutions, to the admissibility of evidence of his performance on two roadside sobriety tests, he contested the admissibility of opinion evidence offered by two police officers and the propriety of the trial court's instructions on reasonable doubt.

Our order on the defendant's petiton for certification to appeal; *State* v. *Lamme*, 212 Conn. 820, 565 A.2d 541 (1989); granted the petition only with respect to the state constitutional law aspect of his claim concerning the admissibility of field sobriety tests. The question we certified is: "What

The opinion of the Appellate Court reports the relevant facts. During the evening of October 22, 1987, the defendant consumed several alcoholic beverages at the bar of the Trumbull Marriott hotel. At the request of the hotel management, in the early hours of the following day, police officer Richard Applebaum of the Trumbull police department wakened the defendant who was asleep in a chair in the front lobby. *State* v. *Lamme*, supra, 595. Noticing a strong odor of alcohol on the defendant's breath, Applebaum offered to arrange a safe ride home for the defendant. Id. The defendant responded, however, that he would wait in his car for a friend to drive him home. Id., 595–96. Having watched the defendant walk to his car with an uncertain gait, Applebaum radioed police headquarters with a description of the defendant and his car. Id., 596.

Police Officer Thomas Savarese heard the police broadcast and drove down a public road in the vicinity of the Marriott, where he observed the defendant driving a car that matched the broadcast description and did not have its headlights illuminated. Because the failure to display lighted headlights while on a public highway at night is an infraction; see General Statutes § 14-96a (d);[4] Savarese stopped the defendant's car. Id. Savarese too noticed a strong odor of alcohol on the defendant's breath and then asked the defendant to step out of his car to take roadside sobriety tests of his physical dexterity.[5] Id. The defendant's failure to

standard governs the determination of whether the detention of a criminal defendant is 'clearly warranted' under article first, § 9, of the Connecticut constitution?"

[4] "[General Statutes] Sec. 14-96a. LIGHTED LAMPS AND ILLUMINATING DEVICES REQUIRED, WHEN. . . .

"(d) Failure to provide lighted lamps and illuminating devices at such time as required by this section shall be an infraction."

[5] The defendant was asked to perform two sobriety tests: to walk heel to toe in a straight line and to touch his index finger to the tip of his nose with his eyes closed.

pass these tests was the basis for his arrest for driving while under the influence of intoxicating liquor. Id. After the defendant's arrest, Savarese took him to police headquarters. Id.

On these facts, the trial court and the Appellate Court concluded that the defendant was not entitled to suppress evidence concerning his performance on the field sobriety tests. Both courts agreed that the police had legally stopped the defendant, in the first instance, for driving without illuminated headlights in the dark of night. Id., 599. Thereafter, the odor of alcohol on the defendant's breath furnished a reasonable and articulable suspicion that the defendant might be involved in criminal activity and justified his further detention for the limited intrusion represented by sobriety testing at the place where he was being detained. As a matter of federal constitutional law under the fourth and fourteenth amendments to the United States constitution, the police made a valid *Terry* stop, as such a detention has been defined in *Terry* v. *Ohio*, 392 U.S. 1, 20–22, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), and subsequent cases. See, e.g., *United States* v. *Hensley*, 469 U.S. 221, 227, 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985); *Florida* v. *Royer*, 460 U.S. 491, 499–500, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983); *State* v. *Aillon*, 202 Conn. 385, 398–402, 521 A.2d 555 (1987); *State* v. *Carter*, 189 Conn. 611, 617–18, 458 A.2d 369 (1983).

In the present appeal, the defendant urges us to hold that our state constitution requires a different result by virtue of article first, § 9, which provides that "[n]o person shall be arrested, detained or punished, except in cases clearly warranted by law." The defendant maintains that this section forbids the police to detain any person, even on reasonable and articulable suspicion, unless and until the police have probable cause to make an arrest. Applied to the facts of this case, the defendant's theory would require exclusion of the

results of his roadside sobriety tests because the police concededly did not have probable cause to arrest him for driving while under the influence until he failed to pass these tests. We are unpersuaded.

The defendant's constitutional claim focuses on the phrase "except in cases clearly warranted by law." Although this court has not specifically addressed the import of this language in the context of an investigative detention short of an arrest, we have generally characterized article first, § 9, as one of our state constitutional provisions guaranteeing due process of law. See, e.g., *State* v. *Marra*, 195 Conn. 421, 425, 489 A.2d 350 (1985); *State* v. *Castonguay*, 194 Conn. 416, 420, 481 A.2d 56 (1984); *Parks* v. *Bourbeau*, 193 Conn. 270, 278 n.8, 477 A.2d 636 (1984).[6] A due process perspective therefore informs our assessment of the defendant's contention that, because warrants cannot be issued without a showing of probable cause, the phrase "clearly warranted by law" mandates a universal probable cause standard whenever the police restrain personal freedom to any degree.

In examining the text of article first, § 9, to determine the extent to which it supports the defendant's claim, "we must assume that infinite care was employed to couch in scrupulously fitting language a proposal aimed at establishing or changing the organic law of the state. *Cahill* v. *Leopold*, 141 Conn. 1, 19, 103 A.2d 818 [1954]; 1 Cooley, Constitutional Limitations (8th Ed.) p. 125. Unless there is some clear reason for not doing so, effect must be given to every part of and each word in the constitution." *Stolberg* v. *Caldwell*, 175 Conn. 586, 597–98, 402 A.2d 763 (1978),

[6] By contrast, article first, § 7, of the Connecticut constitution provides constitutional protection from unwarranted searches and seizures. The scope of § 7 is not currently before us in light of the question that we certified. The Appellate Court, however, rejected the defendant's claim under § 7. *State* v. *Lamme*, 19 Conn. App. 594, 600–601, 563 A.2d 1372 (1989).

appeal dismissed sub nom. *Stolberg* v. *Davidson*, 454 U.S. 958, 102 S. Ct. 496, 70 L. Ed. 2d 374 (1981). In article first, § 9, the "except in cases clearly warranted by law" clause modifies, without apparent distinction, the rights of a person "arrested, detained or punished." Although the validity of an arrest turns on proof of probable cause, that standard of proof has no bearing on the legality of punishment. Accordingly, on its face, § 9 does not impose a universal probable cause standard in all the circumstances that the section encompasses. Furthermore, § 9's separate inclusion of arrests and detentions counsels against finding an intent to impose a constitutional requirement for a parity of treatment between the greater intrusion on personal freedom represented by an arrest and the lesser intrusion represented by a detention. Read in its entirety, the text indicates that the specific content appropriately to be assigned to the phrase "clearly warranted by law" depends on the particular liberty interest that is at stake. Such a construction is, of course, entirely consonant with the general contours of a constitutional safeguard rooted in flexible principles of due process. See, e.g., *Asherman* v. *Meachum*, 213 Conn. 38, 46, 49–53, 566 A.2d 663 (1989); *Mathews* v. *Eldridge*, 424 U.S. 319, 324–25, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976); *Morrissey* v. *Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972).

The historical antecedents of article first, § 9, shed little light on the scope of the section's mandate with regard to detentions. The precise language of the present section was originally adopted as article first, § 10, of the Connecticut constitution of 1818.[7] Prior to 1818, Connecticut's declaration of rights took the form of a statutory enactment dating back to the preamble to Ludlow's Code of ~~1650. That~~ preamble provided that

[7] The present enumeration results from the 1965 constitution's incorporation of the former article first, § 4, into article seventh.

"no mans life shall bee taken away . . . no mans person shall bee arrested, restrained, banished, dismembered nor any way punished . . . under colour of Law or countenance of Authority, unless it bee by the vertue or equity of some express Law of the Country warranting the same, established by a General Courte, and sufficiently published, or in case of the defect of a Law in any perticular case, by the word of God." 1 Public Records of the Colony of Connecticut 509 (J.H. Trumbull Ed. 1850). This text survived with only minor changes until its last codification before the adoption of the constitution, in the 1808 Public Statute Laws of Connecticut. At that time, the final clause of the preamble read: "unless clearly warranted by the laws of this state." Public Statute Laws of the State of Connecticut (1808), Title I, § 2.

For present purposes, the most significant aspect of the pre-1818 declaration of rights is that it had constitutional overtones even though it was statutory in form. "The Declaration and supplementary statutes relating to individual rights were grounded in the Connecticut common law and viewed as inviolate. Abridgements perpetrated by the government were considered void on their face and courts were to refuse to enforce them." C. Collier, "The Connecticut Declaration of Rights Before the Constitution of 1818: A Victim of Revolutionary Redefinition," 15 Conn. L. Rev. 87, 94 (1982); see also H. Cohn & W. Horton, Connecticut's Four Constitutions (1989) p. 18. The historical roots of "except in cases clearly warranted by law" appear therefore to provide protection for personal freedom through a blend of statutory and constitutional rights that, like the text of the current article first, § 9, incorporates no single constitutional standard.

The Connecticut constitutional convention of 1818 enacted a constitutional declaration of rights as an integral part of its major agenda of replacing a

parliamentary form of government based on legislative hegemony with a system of government embodying a division of power among three distinct departments: legislative, executive and judicial. The adoption of a written declaration of rights reflected an important change in political attitudes. "[T]he old pre-Revolutionary leaders thought that republican government with legislative supremacy was the best safeguard of personal liberties. . . . By . . . 1818, the beliefs of the old revolutionaries were replaced by the thinking of the post-Revolutionary generation, who perceived the necessity of written guarantees . . . [for the protection of personal rights that might not] be safe with the legislature and the courts . . . ." C. Collier, supra, 98. The history of the convention, officially reported in the Journal of the Proceedings of the Convention of Delegates (1873), does not, however, reveal why, in formulating the new declaration of rights, the drafters elected to modify the terms of its statutory antecedent by replacing "restrained" with "detained" and by replacing "clearly warranted by the laws of this state" with "clearly warranted by law."

This constitutional history demonstrates an underlying concern for protection of personal freedom that does not readily translate into constitutional doubt about the legality of brief investigative detentions. The available case law, in the period immediately antedating the adoption of the constitution of 1818, suggests that the official investigation of potentially criminal behavior was not then viewed as constitutionally suspect. See, e.g., *Wrexford* v. *Smith*, 2 Root 171 (1795); *Knot* v. *Gay*, 1 Root 66, 67 (1774); and see 2 Z. Swift, A System of the Laws of the State of Connecticut (1796) 390–91. The only case decided reasonably contemporaneously with the adoption of the 1818 constitution followed the pre-constitutional pattern of construing "warranted by law" as having a statutory

referent similar to that expressly contained in the pre-1818 statutory declaration of rights. In that case, *Jackson* v. *Bulloch*, 12 Conn. 38, 43 (1837), this court noted the "solicitude for personal liberty manifested in the constitution," but attached no specific constitutional consequences to that constitutional solicitude. Faced with a petition for a writ of habeas corpus seeking the release of a slave brought to this state by her Georgia owner, the court framed the issue as "what was the state of our law upon this subject, at the time of the adoption of the constitution of this state: for it has not since been varied." Id. The court resolved that issue, in favor of freedom, under the relevant "state of our law" as found in the provisions of pre-1818 statutes for the abolition of slavery in Connecticut. While the statutory resolution of the issue posed to the court may well have obviated the need to articulate a constitutional standard, *Jackson* v. *Bulloch's* framing of a constitutional issue in statutory terms indicates that detentions under article first, § 9, near the time of its adoption, were not perceived as invoking special constitutional considerations apart from applicable statutory constraints.

In this century, the case law under article first, § 9, continued to emphasize the central role of statutory safeguards in implementing the constitutional right of personal liberty. In *State* v. *Carroll*, 131 Conn. 224, 227–29, 38 A.2d 798 (1944), this court held that a police officer could be charged with manslaughter for having used physical force to consummate a warrantless arrest under circumstances unauthorized by the applicable statute. Despite the broader reach of common law authority to arrest, and despite the reasonableness of the officer's suspicions, this court characterized the officer's attack on his victim as "a gross violation of his fundamental rights," citing the text of article first, § 9. Id., 231; see footnote 7, supra. The basis for the con-

stitutional violation was, however, the mandate of the statute: "[T]he purpose of the close restriction upon arrests without warrants is to protect the liberty of the innocent. We cannot say that the legislature adopted a wrong policy when it weighed that liberty against the possibility that some guilty person might escape." Id.; see also *Sims* v. *Smith*, 115 Conn. 279, 281–83, 161 A. 239 (1932).

Only in *State* v. *Federici*, 179 Conn. 46, 425 A.2d 916 (1979) has this court assigned independent substantive significance to article first, § 9. *Federici*, like *State* v. *Carroll*, dealt with the consequences of an arrest that, lacking probable cause, was illegal under the relevant statute; General Statutes § 54-1f; and article first, §§ 7, 8, and 9 of the Connecticut constitution. We concluded, in *State* v. *Federici*, supra, 61–62, that when an arrest is tainted by its linkage to an unconstitutional search and seizure, the use of such illegally obtained evidence in a subsequent prosecution compromises the right to a fair trial and requires dismissal of the outstanding charges related thereto. See also *State* v. *Fleming*, 198 Conn. 255, 261–62, 502 A.2d 886 (1986).

Federici also addressed the validity of a detention short of an arrest. Because the defendant in that case had conceded the constitutionality of his initial detention; *State* v. *Federici*, supra, 51; we relied on *Terry* v. *Ohio*, supra, as well as article first, §§ 7, 8 and 9, to conclude that reasonably articulated suspicions justified the police in stopping the defendant's car and in detaining him for routine questions and observations. *State* v. *Federici*, supra, 57. We held, further, that this justifiable stop, based on a police broadcast of the description of an escape vehicle and the lack of a displayed rear marker plate on the defendant's car, permitted the police to "view" the contents of the car. Id. At the least, *Federici* suggests that this court did not

then perceive any fundamental inconsistency between the legality of a detention under our state constitution and the principles of *Terry* v. *Ohio*.

In sum, the few available precedents, like the text of article first, § 9, counsel against the conclusion that only a detention supported by a showing of probable cause is "clearly warranted." We have, however, never addressed this issue head on, and now must consider whether sound constitutional policy requires us to adopt a different view. "The Connecticut constitution is an instrument of progress, it is intended to stand for a great length of time and should not be interpreted too narrowly or too literally so that it fails to have contemporary effectiveness for all of our citizens." *State* v. *Dukes*, 209 Conn. 98, 115, 547 A.2d 10 (1988). In searching for an appropriate contemporary interpretation of our constitution, furthermore, we may look to, but are not bound by, relevant precedents in the federal courts. "We have frequently relied upon decisions of the United States Supreme Court interpreting . . . the United States constitution, to define the contours of the protections provided in the various sections of the declaration of rights contained in our state constitution. We have also, however, determined in some instances that the protections afforded to the citizens of this state by our own constitution go beyond those provided by the federal constitution, as that document has been interpreted by the United States Supreme Court." *State* v. *Marsala*, 216 Conn. 150, 159–60, A.2d (1990); *State* v. *Dukes*, supra, 112; *State* v. *Stoddard*, 206 Conn. 157, 166, 537 A.2d 446 (1988); *State* v. *Jarzbek*, 204 Conn. 683, 707–708, 529 A.2d 1245 (1987), cert. denied, 484 U.S. 1061, 108 S. Ct. 1017, 98 L. Ed. 2d 982 (1988); *State* v. *Kimbro*, 197 Conn. 219, 234–35, 496 A.2d 498 (1985); *Horton* v. *Meskill*, 172 Conn. 615, 641–42, 376 A.2d 359 (1977).

Our appraisal of the due process contours of article first, § 9, leads us to conclude that the principles of fundamental fairness that are the hallmark of due process permit a brief investigatory detention, even in the absence of probable cause, if the police have a reasonable and articulable suspicion that a person has committed or is about to commit a crime. We hold, therefore, that the principles underlying constitutionally permissible *Terry* stops, as further construed in cases such as *United States* v. *Hensley*, supra, 227, and *Florida* v. *Royer*, supra, 498, define when detentions are "clearly warranted by law" under article first, § 9. Balancing the circumscribed nature of a *Terry* stop intrusion against the serious risks of criminal behavior, especially in the context of the risks associated with driving while under the influence of intoxicating liquor,[8] we are persuaded that the defendant's brief detention did not violate his due process rights.

The adoption of federal constitutional precedents that appropriately illuminate open textured provisions in our own organic document in no way compromises our obligation independently to construe the provisions of our state constitution. We have previously held that "the warnings enunciated by *Miranda* v. *Arizona*, [384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)] . . . are independently required under the due process clause of article first, § 8, of the Connecticut constitution." *State* v. *Barrett*, 205 Conn. 437, 447, 534 A.2d 219 (1987), and cases therein cited. We have likewise concluded that a claimed right to hybrid representation, unavailable under the sixth amendment to the United States constitution, is equally unavailable, despite some textual distinctions, under article first, § 8. *State* v. *Gethers*, 197 Conn. 369, 382–88, 497 A.2d 408 (1985).

[8] We note that the timely intervention of the police in this case may well have saved the defendant from facing much more serious charges, as well as possible injury to himself.

Our decision to interpret article first, § 9, in light of *Terry* v. *Ohio* finds further support in the universal acceptance of its governing principles in state constitutional law cases around the country. See, e.g., *State* v. *Kennedy*, 107 Wash. 2d 1, 4, 726 P.2d 445 (1986).

In conclusion, the text, the history, and the policy embodied in article first, § 9, all rebut the position of the defendant that an investigatory detention without probable cause cannot pass constitutional muster.[9] The defendant's conviction must stand.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

STATE OF CONNECTICUT *v.* JAMES J. MORRISSEY
(13793)

PETERS, C. J., CALLAHAN, GLASS, COVELLO and HULL, Js.

The defendant, on the granting of certification, appealed to this court from the decision of the Appellate Court remanding his case to the trial court for a determination of whether certain evidence that had been suppressed by the trial court could be admitted under a good faith exception to the exclusionary rule. The defendant had been charged with the crimes of possession of cocaine with intent to sell, possession of drug paraphernalia and possession of marihuana, and the information had been dismissed following the trial court's granting of the motion to suppress. *Held* that the Appellate Court should have affirmed the judgment of the trial court; the Connecticut constitution does not authorize a good faith exception to the hearsay rule.

Argued May 1—decision released August 7, 1990

Information charging the defendant with the crimes of possession of cocaine with intent to sell, possession of drug paraphernalia and possession of marihuana, brought to the Superior Court in the judicial district

[9] In light of the difficulties that attend research into state constitutional law, we commend both counsel for their highly professional and wide ranging briefs in this case.

NO. 32634	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF FAIRFIELD
VS	:	AT BRIDGEPORT
DAISY HAMILTON	:	JULY 20, 1987

BEFORE: HONORABLE EDWARD STODOLINK, JUDGE

APPEARANCES

FOR THE STATE — JOHN SMRIGA, ESQ.
ASST. STATE'S ATTY.

FOR THE ACCUSED — MARK GROSS, ESQ.

Virginia Stefanko
Court Monitor

THOMAS RUSSELL, 300 Congress Street, Bridgeport, Connecticut, having first been duly sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION BY MR. SMRIGA

Q Detective Russell, how long have you been a member of the Bridgeport Police Department?

A Eighteen years.

Q And what is your current assignment in the Bridgeport Police Department?

A I'm a detective assigned to the Special Services Division.

Q How long have you been a detective?

A I've been an acting detective for two years, permanent rank, a year and a half.

Q How long have you been assigned to the Special Services squad?

A A year and a half.

Q And what is the function of the Special Services squad?

A I investigate narcotics, gambling, liquor, prostitution.

Q Now as a member of the Special Services squad, did you have occasion to execute a search and seizure warrant at the P.T. Barnum Apartments, Building 5, Apartment 305 on February the 18th, 1987?

A Yes, I did.

Q And do you know who the occupant of that apartment was?

A Yes, I do.

Q And who was the occupant?

A A Daisy Hamilton.

Q When you went to the apartment, do you know what you were looking for? What the warrant was for when you were searching the apartment?

A It was for narcotics.

Q Do you know what information that you had at the time that you went in as far as the location of the narcotics that you might find in there?

A Well we were briefed before --

MR. GROSS: Objection. He's asking for a hearsay answer.

MR. SMRIGA: Absolutely, Your Honor. I think it's important that I ask for a hearsay answer.

THE COURT: I'll overrule the objection.

MR. GROSS: Exception.

Q What did you have in your mind when you went into the -- what were you looking for?

A Crack vials, cocaine.

Q Do you know why you were looking in that apartment for crack vials and cocaine?

A Because I believed they had a controlled buy.

Q When you say, "they," who do you mean?

A Detective DeReiso and Detective Cordoza.

MR. GROSS: Again, Your Honor, I'm going to

object to any conclusions he's made based on a hearsay basis. He's making a statement of a controlled buy from somebody else. That's hearsay. Please note an exception.

THE COURT: Okay. Exception.

Q And the controlled buy, what did that involve? What did you think it involved?

A The purchase of narcotics.

Q And did that purchase of narcoctics involve any other location or vehicle other than the apartment?

A Yes, it did.

Q What else did it involve?

A It involved a van.

Q Where was that van?

A Parked right alongside of the building. I believe it was Building 5.

Q And in fact, at the time that you executed the search warrant for apartment 305, did you know whether or not the police that you were with or you yourself, were you also armed with a search warrant for the van?

A Yes, they were.

Q And as a matter of fact, did you have any other warrants for any other people?

A There was a body search warrant for Daisy Hamilton. There was a search warrant for the premises at 305. There was a search warrant for the van.

Q Okay. How about for her son, Diomus?

A I don't recall.

Q Did you have occasion, when you went into the apartment -- what did you do when you went to the apartment?

A I was assigned to search Daisy Hamilton's bedroom.

Q And did you seize any evidence or seize any items when you went into her bedroom?

A I seized a set of keys.

Q Now when you say, "a set of keys," what are talking about?

A It was a Ford ignition key.

Q Now where did you see that?

A It was on a dresser and the dresser has a mirror and surrounding the mirror is these little shelves and I believe it was one of the shelves on the left hand side of the mirror.

Q Do you remember how many keys there was on the key ring? It was on a key ring?

A Yes, it was.

Q Do you remember how keys were on the key ring?

A I believe it was three or four.

Q Okay. Now why did you chose to seize those keys?

A Detective DeReiso asked if anybody found any Ford vehicle keys.

Q Had he asked you that?

A Yes.

Q And did you have any idea why he was asking that question?

A Yes, I did.

Q And why do you think he was asking that question?

A He wanted to unlock the van that was being guarded downstairs that was a Ford van.

Q Before you went into the apartment, did you know that the keys to the van were in the apartment?

A No, I did not.

Q Did you believe that there was a possibility that the keys might be in the apartment?

A Yes, I did.

Q Do you know where they would be found in the apartment?

A No, I did not.

Q When you looked at the keys, were you able -- what were you able to tell about them when you looked at them?

A I was pretty sure that they were a Ford vehicle keys cause I've seen similar in the past in Ford --

Q What did you do with the keys after you seized them?

A I handed them to Detective DeReiso.

MR. SMRIGA: I have no further questions, Your Honor.

THE COURT: Mr. Gross.

CROSS EXAMINATION BY MR. GROSS

Q Officer, did you make any written reports of the activities of this evening?

A Of that evening? No, I did not.

Q Now you've testified in courts before in criminal

cases, haven't you?

A Yes, I have.

Q So this isn't a new experience?

A No, it's not.

Q I'm going to ask you questions that will probably call for yes, no answers. I ask you if that's the case, I would ask you to answer yes or no. Now the night -- now you did not take part in any surveillance regarding the search warrant, did you?

A No, I did not.

Q But you knew that prior to the date of the execution of this warrant at 305 -- apartment 305, there had been a surveillance, correct?

A Yes.

Q And that was more than a day before the execution of the warrant, correct?

A I believe so.

Q Now as a matter of fact, before coming here in this courtroom, you knew and know that the whole issue is the suppression of the keys?

A Yes.

Q All right. And you talked about this to the state's attorney, correct?

A Yes.

Q And he's advised you as to the law and things of that nature?

A Well he's talked about it. Of course he has.

Q And prior to the search, you and the other men in your detachment met and discussed how you would go about the search, correct?

A Yes.

Q As a matter of fact, you knew at that time that one of the objects to be searched was a van, correct?

A Yes.

Q Now at that time, I'm going to ask you, were you the first person to go into the apartment? Who was the first person to go into the apartment?

A I don't recall.

Q There were what, eight other police officers in the apartment at that time?

A I would say there was.

Q Prior to -- question withdrawn. And when you went in, was your orders to look for car keys for the van. Isn't that true?

A No.

Q No? You weren't looking for them?

A No.

Q You were just looking for the crack. Is that correct?

A I was looking for narcotics.

Q So I take it, the first time you saw what you call three or four keys, you just looked at them and just kept searching the rest of the apartment, correct?

A Correct.

Q It was only when Sergeant DeRelso from another room

yelled out, have you found the keys, correct?

A Correct.

Q And Sergeant DeReiso, he was in charge of this raid?

A It was his search warrant. He's in charge.

Q Okay. So that he, for all that I know about it, a police officer was in charge of this search of the Hamilton house. Correct?

A Yes.

Q Did you hear him ask Daisy Hamilton, when he walked in, if the keys to the van were parked -- question withdrawn. Did you hear him ask Daisy Hamilton if the keys to a van parked outside were in the apartment?

A No, I did not.

Q You don't know whether that question was asked or not?

A No, I did not.

Q After you searched -- when you first looked at those keys, those keys meant nothing to you. Correct?

A Correct.

Q And this was having knowledge that a Ford van was used in a controlled buy of drugs. Correct?

A Correct.

Q You looked at these set of keys? Correct?

A Yes.

Q You put them down, correct?

A I never picked them up.

Q Oh, in other words as you looked at them, they meant nothing to you. Correct?

A Correct.

Q After 18 years on the police department, you knew what drugs looked like, correct?

A Correct.

Q You know what crack looked like, correct?

A Yes.

Q Now how long a time was the planning session before you executed -- when I use the word, "execute," I guess actually went into the Hamilton house. Was it more than an hour?

A I would say less than an hour.

Q But I take it this is standard operating procedure before you go into a house. Is that correct?

A Yes.

Q In other words, if it's Detective DeRelso's search, he wants to make certain, number one, of your personal safety. Correct?

A Correct.

Q All right. And number two, he wants to make certain that what he's looking for is going to be found. Correct?

A Correct.

Q And as a matter of fact, he wants to make certain for everybody's safety and for organization, every person has a specific place to search. Correct?

A Correct.

Q And I guess it's a fair statement that you read the search warrant and the application for the search warrant before you went to Mrs. Hamilton's apartment?

A No, I did not.

Q I take it though that because you know a controlled buy was made, you knew the facts under which a warrant was sought. Correct?

A I was told that by him.

Q Yeah, you were told at that meeting that there was a buy out of a Ford van. Correct?

A Correct.

Q And you knew before you went in, there was a search warrant for a van. Correct?

A Correct.

Q And you knew before you went in there was a search warrant for the Ford van. Correct? You knew that there was a search warrant for the Ford van. Didn't you?

A For a van.

Q For a van. And you knew that there was a search warrant for the apartment, correct?

A Correct.

Q You didn't know there was a search warrant for a Ford van?

A Not specifically a Ford van.

Q I'm going to show you and ask you if this affidavit and application for search and seizure warrant, you've ever seen before?

A I'm seeing it now.

Q You've never seen it before?

A No.

Q What were you going to do, Officer, go and search every van in P.T. Barnum that night?

A No, I wasn't assigned to search a van.

Q Who was assigned to search a van that night?

A I have no idea.

Q You didn't hear or you don't want to recall?

A I don't recall who was assigned --

MR. SMRIGA: Objection, Your Honor. I'd ask that that question be stricken.

THE COURT: That phrasing of the question is improper, Mr. Gross.

Q In other words, you don't recall who was assigned to search the van, correct?

A Correct.

Q All right. But there's no question that at that meeting before the execution of this warrant, assignments were handed out to everybody. Isn't that true?

A Yes.

Q At that time, somebody was told to search for an orange Ford van with no plates at Building 5 in P.T. Barnum. Isn't that true?

A Yes.

Q Now when you went out on the search, this was a well planned and well organized search execution. Correct ?

A Correct.

Q A type of military operation. Correct?

A Correct.

Q I mean as a practical matter, it was proper. No one got hurt, no one was beaten. No policemen were hurt. Everything was done in a timed, uniformed, intelligent operation. Correct?

A Correct.

Q While you were searching apartment 305, other people were going to search the Ford van. Correct?

A Correct.

Q So that it was known to the raiding party that a Ford van was the object of a search by virtue of a search warrant that Detective DeReiso executed. Correct?

A Correct.

Q So that when you walked in, you knew a van was surveilled and as you walked into this room and you inadvertantly looked at keys, they meant nothing to you whatsoever. Correct?

A Correct.

Q It was only when the head of the search execution party or raiding party, if you will, called out, have you seen any keys for a Ford van that you first went back and looked. Correct?

A While I was still in the room.

Q And then you looked and went back and picked up the keys. Correct?

A Correct.

Q Now you said there were three or four keys on the key ring. Isn't that so?

A Correct.

Q And they were for other uses beside a Ford van. Correct?

A I don't believe so. I believe they were all for the van. I don't believe that there were house keys on it. If that's what you're getting at.

Q You don't know of your own knowledge whether all four fit the van. Do you?

A No, I don't.

Q Now you did not, I guess in your capacity as a member of the raiding party -- question withdrawn. You know the law regarding search warrants and inventory, I guess, don't you?

MR. SMRIGA: Objection, Your Honor.

THE COURT: I'll sustain that objection.

Q Have you ever filled out an inventory of a search warrant?

MR. SMRIGA: Objection, Your Honor..

MR. GROSS: I'm going to claim that.

MR. SMRIGA: Objection. The bottom line is if there's a claim with regard to the inventory, the bottom line is going to be whether or not, if it's supposed to be there, whether or not it is or it isn't, not what his understanding is about the law.

THE COURT: I'll sustain the objection.

MR. GROSS: Exception.

Q You didn't fill out the inventory of things seized

in this apartment, did you?

A No.

Q And as a matter of fact, the only thing that you claim you found in the bedroom was the keys?

A Yes.

Q If Detective DeRelso had not called out to you to look for a Ford key, having found no narcotics in that room, you would have left the room. Is that a fair statement?

A Yes.

Q And once your part of the search was concluded, you would have gone to some other area and once the whole house was searched, you would have left?

A Yes.

Q After doing whatever other arrests, whatever were done. Correct?

A Yes.

MR. GROSS: Thank you very much.

THE COURT: Redirect.

MR. SMRIGA: I have no further questions, Your Honor.

R I C H A R D D E R E I S O, 300 Congress Street, Bridgeport Connecticut, having first been duly sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION BY MR. SMRIGA

Q Detective DeReiso, how long have you been a member of the Bridgeport Police Department?

A Over nine years.

Q And how long have you been a detective?

A A regular detective over a year.

Q An acting detective for some period of time?

A Yeah, almost a year as an acting detective.

Q And you're currently assigned to Special Services?

A Yes.

Q How long have you been assigned to Special Services?

A Over the past two and a half years, on and off.

Q So while you were an acting detective, you also worked with them?

A Yes.

Q And what is your primary responsibilty as a member of the Special Services squad?

A We do mostly narcotic enforcement.

Q And as part of your duties in enforcing the narcotics laws, do you have occasion to execute search and seizure warrants occasionally?

A Yes, we do.

Q How often do you do that?

A It's hard to say. Sometimes one a week. I mean, one a day, for a week and then sometimes we don't do any for a week

and a number of them we do.

Q Now on February the 18th, 1987, did you have occasion to execute a search and seizure warrant at P.T.Barnum Apartments?

A Yes.

Q And as a matter of fact, did you have more than one warrant at that time?

A Yes.

Q And what did you have warrants for?

A I had warrants for an apartment, a van and two persons.

Q What two persons?

A Daisy Hamilton and Diomus Hamilton.

Q Now the apartment, is that apartment 305, Building 5?

A Yes.

Q And do you know who was responsible for making that application to get that search warrant?

A Yes, I was.

Q And what did you rely upon? What information did you have that caused you to want to apply for a search and seizure warrant?

A I had a controlled buy made by a confidential informant.

Q And what was the circumstances -- what contact did you have with the confidential informant that you described as a controlled buy?

A First the informant told me about the -- he told me about the area. He told me about apartment. He told me about

the person.

Q When you say, "the person," what person are you talking about?

A Excuse me. Miss Hamilton.

Q Daisy Hamilton?

A Daisy Hamilton.

Q What did he tell you about her?

A He told me that she was selling crack. And that she had sold crack to him in the past.

MR. GROSS: Well, Your Honor, may I ask what the relevancy is on this suppression of keys? Cause if there isn't any, I'd move that it's all irrelevant and if anything, prejudicial.

MR. SMRIGA: I think the bottom is going to be what he knew and what he didn't know.

THE COURT: If you're objecting, I'll overrule the objection.

MR. GROSS: All right, exception.

Q And after he told you that, what did you do in order to gain additional informantion?

A Well at that time, we bring him to the area where we were going to make the controlled buy. He was searched to make sure he had no narcotics on him or any money to buy more narcotics. He's given money to make the controlled buy. He's sent. He's watched as far as we can watch him. He usually go to the apartment, meet the person, make the controlled buy, took him back to the car and we'll watch him

as he comes back to the car and when he gets in the car, hands over the narcotics.

Q Did you do that on this occasion?

A I think we had to do it twice on this -- during this warrant.

Q And why did you do it twice?

A Well the first time he was sent up, he was told that she didn't have anything now, come back later.

Q Were you informed who told him she didn't have anything?

A Yes, he told me Daisy Hamilton told him, I believe. I'm not quite sure.

Q And you went back on a separate occasion?

A Went back another time, yes.

Q What happened that time?

A Okay, at that time we went up into the apartment. Daisy Hamilton was there and her son was there. Diomus. The son told him to come with him. The son brought him downstairs. They went to a van that's parked right outside. The son went to the door. I believe it was locked because he was at the door for a little while. Then he opened the door. He leaned inside. He went back outside. There was a transaction conducted. I couldn't see exactly the transaction cause the door and the van were covering it. Then the informant came back to the car.

Q What if anything, did he have when he came back to the car?

A He had a crack -- he had a vial of crack.

Q Now at some point, you applied for a search and seizure warrant based on that information and you received one?

A Yes.

Q And on the 18th of February, you went back there and executed those warrants?

A Yes.

Q When you got there, where did you go to first? Did you go to the truck first or the apartment first?

A The main group went to the apartment. We had a detective and we had other people covering that just watched the truck.

Q And did you assign someone to search the van?

A Yes.

Q Did you search the van yourself?

A No, I didn't search the van. I was evidence officer.

Q And at some point, did you enter the apartment?

A Yes.

Q And did you see Daisy Hamilton in there?

A Yes.

Q What did you do when you first got in there?

A Well normally we get everybody into one room. The biggest room which is usually the living room. They're advised we have search and seizure warrants. They're given copies of the search and seizure warrants.

Q At any point, did you speak to Daisy Hamilton?

A Yes.

Q What did you say, if you recall?

A I remember that I advised her that we had a search and seizure warrant. I probably asked her if she had keys to the van downstairs.

Q What if you recall, was her response?

A As I recall, she didn't know anything about the van downstairs. , or have any keys to it.

Q That's what you were told by her?

A Yes.

Q What was the purpose for asking for the keys at that time?

A Well mainly we were going to search the van. In lieu of breaking into it or having to call the tow truck to come open it for us. It was easier if we had the keys.

Q And do you know where -- did you come upon keys at some point?

A Yeah, a little while later the keys were found.

Q And were they found by you?

A No.

Q Who were they found by?

A Detective Russell.

Q And did you tell anyone to look for the keys at some point?

A I advised the people who were searching that I was looking for Ford keys.

Q Why were you looking for Ford keys?

A The van was a Ford van.

Q Before you got into the apartment, did you know where the keys were?

A No.

Q And did you know for sure that the keys were in the apartment before you got there?

A Not for sure. I assume they would be there.

Q And did you ever see -- did you have any information that the -- specific information that the keys were in Daisy Hamilton's bedroom?

A No.

Q Did you have any specific information that the keys were somewhere in that apartment?

A No.

Q Did you seize other evidence besides keys?

A Yes.

Q Where did you seize them from?

A We seized some from the house, some from the van.

Q And generally, what kind of things did you seize other than the keys?

MR. GROSS: I'm going to object, Your Honor. The purpose of this is to make a record for a suppression hearing.

THE COURT: Yes, I don't quite understand the relevance, unless you're claiming that somehow it's going to connect up.

MR. SMRIGA: Well it's going to end up talking about keys, Your Honor. Perhaps I could go about it a different way.

THE COURT: I don't mean to foreclose you.

I want you to make a full record.

MR. SMRIGA: I can do it another way.

Q When you seized the keys, where did you take the keys? At some point, did you open the van with the keys?

MR. GROSS: Again, Your Honor, I'm going to object. This is a suppression hearing on specific grounds already discussed and what was done with the key after it left the apartment has no relevancy to the core issue that I've raised earlier.

MR. SMRIGA: Your Honor, I'm just trying to lay the foundation. I've already lost the motion. I'm just trying to lay a foundation.

THE OCURT: I'll overrule the objection. I told Mr. Smriga that he could have a reasonable opportunity to make a reasonable record and --

MR. GROSS: Except for one thing, Your Honor, you always hold out the possibility that it can be overturned.

THE COURT: Well you can then take up my error for allowing the evidence to come in.

MR. GROSS: Okay, Your Honor. Exception please.

Q After you opened the door -- you said he opened the car door with the keys?

A I did, yes.

Q The van door rather?

A I did, yes.

Q What did you do with the keys after he used them to open the door?

A I held onto them.

Q And where did they eventually end up?

A The van was seized for in rem proceedings. All our in rem cars are held at the city yard in the big garage down there. They're handed over to Buddy Wade. He's in charge.

Q And the keys were kept with the van?

A The keys were kept in a box in his office.

Q Why are the keys kept there at the city yard rather than in an evidence locker at the police department?

A It's just -- they're kept with the van.

Q And is the van parked in a lot?

A The van's parked in the building.

Q In a building?

A Yes.

Q Now the van -- how was the van moved from the scene to the building where it was kept?

A Well I drove it from P.T. Barnum to the police station. The next day -- I don't know -- I didn't take it from there. From there it went to one detective who used to handle all the in rems. He handled it after that.

Q So the keys stayed with the van, in other words?

A Yes.

Q Before you went into the building, did you order your men to conduct a search for the keys?

A No.

Q Did you have a meeting before you executed your search and seizure warrants?

A Yes.

Q During that meeting, did you announce to the other men that they should go and look for the keys to the Ford van?

A No.

Q Do you have those keys?

A Yes, I do.

MR. SMRIGA: Your Honor, I don't know if it's necessary or not. I can't think of a reason. I thought if we put them into evidence, there is going to be a van somewhere that can never be moved for the pendancy of whatever other proceedings follow. I don't think it's necessary to put the keys into evidence to establish a record. The keys, however, are available for counsel, if at some point later, it becomes rélevant for him to look at. Obviously all counsel has to do is give me reasonable notice and I'll let him examine the keys. I think they're here today. He can examine them before we leave.

Q Can you describe, however for the record, what the keys are or how the keys appear?

A Ford keys.

Q How many keys?

A Three keys.

Q On a ring?

A It's two rings combined.

Q Attached together?

A Yes, one larger ring with a smaller one.

Q Total number of keys?

A Three.

Q In your opinion, do they appear to be keys to automobiles?

A Yes.

Q Was there anything else attached to the ring?

A There was some black rubber card. It looked like a key tag. To a Corvette.

MR. SMRIGA: I have no further questions.

THE COURT: Mr. Gross.

CROSS EXAMINATION BY MR. GROSS

Q I think in this area there are a lot of areas that I think you and I can agree upon and let me see if this is so. I think you and I can agree that on February 10th of '87, you and Mickey Cordoza conducted a surveillance with a controlled buy at P.T. Barnum. Correct?

A I don't know if that's the exact date, but we did do it, yes.

Q I can give you a copy of your warrant.

A If you tell me the date, I believe you. I'm not arguing with you the date.

Q And on that date, your informant, I guess, told you --

A Yes.

Q -- that a young man from apartment 305 went to the van, opened it up and a controlled buy was made.

A I can tell you that's --

Q Can you agree with me on that?

A I can agree on that plus a little more though, if you would like.

Q Let me ask the questions.

A Go ahead.

Q And I think you can agree that at that time, you believed the person who went into the van to be Daisy Hamilton's son, correct?

A That's what the informant told me, yes.

Q All right. So you'll agree with me that that was who you believed to be her son?

MR. SMRIGA: Your Honor, he can characterize it the way he wants to characterize. The answer has to be the witness' answer.

THE COURT: Yes. I think you're trying to editorialize on the witness' answer, Mr. Gross, and I don't think that's --

Q But at that time, you believed that based on what you were told, that was her son. Correct?

A Yes.

Q Because based upon that, you sought a warrant for Diomus Hamilton, Daisy Hamilton's son. Correct?

A Yes.

Q And from what I've heard, you've been in the Special Services several years?

A Yes.

Q And that this is not the first time you've executed applications for search warrants. Correct?

A Correct.

Q I think you'll agree that on February 11th, a field test of the subject matter of the controlled buy was made --

A That would have been the same day the purchase was made, so the purchase must have been made on the 11th. The 10th might have been --

Q Well let me do this.

MR. SMRIGA: Well, Your Honor, if he asks for an answer, the witness should be allowed to give the answer.

Q Well let me ask you this. Can you identify this?

A It appears to be a search warrant.

Q Just read it and can you identify it?

MR. SMRIGA: Your Honor, it should be marked as an exhibit.

Q Is that the search warrant and application --

MR. GROSS: Not to refresh recollection, Your Honor.

THE COURT: That's true.

Q Now does that refresh your recollection?

A Yes.

Q Is that -- I'm going to leave that there. Is that a copy of the application for a search warrant in this case?

A Yes, it is.

Q All right. Now would you please read the second page -

THE COURT: To yourself.

Q Yes, just read the second paragraph to yourself.

A Yes.

Q Now does that refresh your recollection as to the date a field test was made?

A Yes, it does.

Q Okay. And what was the date of the field test?

A February 11th.

Q Okay. So we know that there was a surveillance on February 10th. What was the date of the field test?

A February 11th.

Q So we know that there was a surveillance on February the 10th. We know -- am I right?

A Yes.

Q Was there a surveillance on February 10th?

A Yes, there was.

Q And we know that there was a field test on February 11th. Correct?

A Yes, there was.

Q I guess what you want to say is that on February 11th, this was when the controlled buy was made. Correct?

A Yes.

Q Now we know on February 11th, a controlled buy was made and then on your observation and based on your experience, you saw a controlled buy made out of an orange Ford van next to Building 5. Correct?

A Yes.

Q At P.T.Barnum?

A Yes.

Q And on the 11th, a field test was made by you as an experienced police officer that proved positive?

A Yes.

Q Based upon that and some other information that appeared in that application, on February 17th, you applied for a search warrant before a judge of the Superior Court. Correct?

A Yes.

Q Now was this the first time that you had ever drawn an application for a search and seizure warrant as a Special Services detective?

MR. SMRIGA: Objection, Your Honor. It's irrelevant.

MR. GROSS: I claim it.

THE COURT: Overruled.

Q Is this the first time?

A No.

Q About how many, prior to February 7th, 1987, if you can recall, applications have you personally drawn and brought to a judge?

A I couldn't give you a number.

Q More than 25?

A Possibly.

Q More than 15?

A Possibly.

Q More than 100?

A That's a little bit much, but it could be.

Q All right. So at least we know it's more than one and less than 100?

A Yes.

Q Probably more than 75?

A It could be.

Q Now if that search warrant -- I think it's a fair statement that every -- there were four that you sought as you told Mr. Smriga. Correct?

A Yes.

Q One for the van, one for the apartment, one for Mrs. Hamilton and one for her son. Correct?

A Yes.

Q All right. Now I take it that you, based on your training and experience, want to search and get evidence to make a case which will ultimately lead to a conviction of those people who you believe broke the law. Correct?

MR. SMRIGA: Objection, Your Honor. His higher motivation in this whole thing is irrelevant.

MR. GROSS: I claim it.

THE COURT: I'll overrule the objection.

Q And that's a fair statement, isn't it?

A Yes.

Q And you're familiar with the mechanics after almost

over 75 warrants of putting down what you want to have seized. Correct?

A Yes.

Q Now I'm going to look at the application for a warrant and I'm going to look at the first -- let me look at the first page where it says, a Judge of the Superior Court. Now at the time you typed those words in -- you typed it?

A Either myself or my partner. I couldn't tell you.

Q All right, but you were there and you signed it. Correct?

A Yes.

Q I mean, that's your signature under oath, correct?

A Yes.

Q You put in there that you believed that certain things would be on the premises in apartment 305 to break the law. Correct?

MR. SMRIGA: Your Honor, I'm going to object, because I think at this point, we're cross examining off of a document that's not only not in evidence, but it's not even marked as an exhibit.

MR. GROSS: Well, Your Honor, Mr. Smriga's trying to make a record. We claim it, Your Honor, this is proper cross examination.

MR. SMRIGA: It's exactly cross examination. There's a document. The record does not reflect what the document is. It should be marked,

Your Honor.

THE COURT: I'll sustain the objection. If you're going to examine him on the contents of the document, the document should be in evidence.

MR. GROSS: All right, for purposes of -- well, I'll withdraw that.

Q Do you recall what you told the court what type of personal property you believed was violating the state statute? At the time you signed that warrant ?

MR. SMRIGA: Your Honor, I'm going to object because in this case, his recollection of what he told the court, is irrelevant. If he's trying to get in the fact that --

THE COURT: I'll sustain the objection.

MR. GROSS: Your Honor, I'm going to make this three page seizure and then --

MR. SMRIGA: I'm wondering if it's already part of the court's file.

THE COURT: I believe we have one in the court's file.

MR. GROSS: Mr. Smriga has already said that I'm testifying to something not on the record. Let me make this part of the record.

MR. SMRIGA: I merely asked if there was a copy in the clerk's file. Therefore, we wouldn't have to copy counsel's --

THE COURT: Yes, we can mark the court's

copy. Mark that as defendant's Exhibit "1" for this hearing.

MR. GROSS: Would there be an agreement by the state that all four applications were the same?

MR. SMRIGA: Your Honor, if that's part of the record, that's my only objection. If we would indicate which one we're talking about, i it's part of the record, then I have no objection to him cross examining the detective off it because it's just the same as if it's evidence.

MR. GROSS: I'm referring then to the request for Building 5, apartment 305.

THE COURT: All right, and that should be noted that that's already part of the record. Therefore, it speaks for itself.

Q So that we know that on February 17th, you applied for the warrant, correct?

A Yes.

Q And we know that you were the leader -- you've been described already as the leader of the raiding party.

A It might have been.

Q It might have been?

A I couldn't tell you.

Q Isn't it a fact --

A I was the evidence officer.

Q -- isn't it a fact that the person who does the

surveillance and applies for the warrant is in charge of that raid?

A Sometimes, yes.

Q Sometimes or all the time?

A Sometimes, yes.

Q Oh, Detective Russell seemed to think that you were in charge of this . Is he wrong?

A I many have been that time. You asked me all the time. All the time, no.

Q Well let's talk about this time. You're absolutely right. On this occasion, you were in charge of the raid?

MR. SMRIGA: Objection, Your Honor. It's been asked and answered.

MR. GROSS: The question the first time was all the time. Now I want to be specific.

THE COURT: I'll allow him to clarify the record. I wasn't sure --

Q The February 18th search of the van, two Hamiltons and the apartment, you were in charge of that execution of the warrant. Correct?

A I could have been.

Q You held a meeting, did you not?

A I could have. I can't -- I can't tell you if it was myself or my partner.

Q Did you bring any records with you about this?

A About who was in charge of --

Q Yes?

A No, sir.

Q Did you make any written reports about this?

MR. SMRIGA: Your Honor, I'm going to object because what we're talking about here is were you in charge. I think that the relevant thing, the thing that he can testify to is what he did, what he -- orders that he gave and who was -- Mr. Gross' judgment of who was in charge is perhaps not relevant, but what this detective did is what's relevant.

THE COURT: I'll sustain the objection to the pursuing the issue of who was in charge. I think -- let's find out what this officer did.

Q You held a briefing meeting?

A There was a meeting held.

Q And at the briefing meeting, you spoke, did you not?

A Possibly.

Q Well you're so much more clear than --

A I'll clarify for you.

Q There was a briefing meeting, wasn't there?

A There was a meeting.

Q You spoke at that meeting, didn't you?

A Possibly. Probably.

Q And you, at that time, told Detective Russell what part of the apartment at 305 he was going to search, didn't you?

A I doubt that.

Q You doubt that?

A Yes.

Q All right. Do you recall whether or not anybody assigned Detective Russell at that briefing meeting, to search the bedroom of Daisy Hamilton?

A I don't recall.

Q Is it possible that it was either you or Detective Cordoza who would have done it. Is that correct?

A It's possible,yes.

Q But at least we do know that there was a raiding briefing. Correct?

A Yes.

Q And we do know that somebody gave out assignments. Isn't that correct?

A Yes.

Q And we do know that at that meeting, some detectives were assigned to guard the van?

A Yes.

Q We know that at least one detective was assigned to go into the van?

A I don't quite understand it, but you'll have to --

Q You said on direct that there were three or four detectives. You were going to search the van and that there were several detectives assigned to guard the van. Correct?

A I don't believe I said detectives.

Q Well police officers.

A Yes.

Q People who wear the badge -- some badge in the Bridgeport Police Department?

A Yes.

Q Assigned at this meeting. Correct?

A Yes.

Q And at no time was anybody ever told to look for keys to a Ford van. Correct?

MR. SMRIGA: Objection, Your Honor, unless he --

Q Unless you know?

MR. SMRIGA: When is he talking about?

MR. GROSS: I think it's clear it's the meeting, but --

THE COURT: Why don't you be more specific.

Q At the raiding meeting, --

A Yes.

Q -- when people were assigned to the van, you were there. Correct?

A Yes.

Q Now I take it these men or women -- were they all men or all women?

A I believe it was all men.

Q Okay. These men were not told to just go to any van and guard it, were they?

A No.

Q They were told there was an orange van subject of the warrant. Correct?

A Yes.

Q And that that was where a controlled buy was made. Correct?

A Yes.

Q And that at that assignment meeting, with all the detectives present, there was a description of the orange Ford van next Building 5 in P.T. Barnum. Correct?

A Yes.

Q And everybody was there and everybody heard. Correct?

A I would assume so, yes.

Q Now let's go to the search at Daisy Hamilton's apartment. As police officers went into the apartment, I think it's a fair statement that people were assigned to different rooms. Correct? To the best of your knowledge.

A It's done sometimes, yes.

Q And it was done in this case?

A I couldn't tell you.

Q You walked in -- were you the first person in, that you remember?

A I don't remember.

Q You were the first person to talk to Daisy Hamilton. Weren't you?

A Probably.

Q And you said to Daisy Hamilton, if the keys to a van parked outside were in the apartment, didn't you?

A I probably asked her if they were there, yes.

Q That's what I'm saying. If the keys to a van -- I'm

quoting from the discovery -- if the keys to a van parked outside were in the apartment. Right?

A Okay.

Q And her answer was, I don't know who the van belongs to, nor do I know where the keys are.

A That I can recall, yes.

Q Now that was done seven days more or less after you saw the controlled buy on February 11th?

A The 6th.

Q Ultimately, you called out to the men in the apartment has anybody found keys to a Ford van. Didn't you?

A I doubt if I yelled out, but I probably did talk to the guys and asked them. I asked if anybody had located keys to a Ford van, yes.

Q As these men were searching, did you ask, have any of you found Ford keys?

A Yes.

Q So it's a fair statement that when you went into the apartment, you were looking for the keys to the Ford van. Correct?

A Later on, yes.When she didn't give up any keys, yes.

Q When you went into the apartment, --

A Yes.

Q --you had some reasonable assumption that the keys were in the apartment because your investigation indicated the son of the defendant had the key. Correct?

A Yes.

Q And there was a search warrant for the orange Ford van. Correct?

A Yes.

Q And when you went in, you did immediately ask Mrs. Hamilton if she had the keys to the Ford van. Correct?

A Probably not immediately, but in our first conversation, yes.

Q And then after the search went underway, you then alerted by asking the men, have any of you found Ford van keys. Correct?

A Yes.

Q So that they were then directed to go looking specifically for Ford van keys. Correct?

A I asked them if they had found any.

Q And that was if you found any, and if not, you will look to see if there were. Correct?

A If they came across them while they were searching, yes.

Q And without that statement by you, the Ford van keys would mean nothing to anybody who looked. Correct?

MR. SMRIGA: Objection, Your Honor. He cannot say what they might have meant to someone else.

THE COURT: I'll sustain that objection. That calls for surmise and speculation.

MR. GROSS: Exception.I have no other questions.

MR. SMRIGA: I have no redirect examination.

THE COURT: Detective DeReiso, just as I would tell all the other officers, you're not to discuss this until this hearing is completed, with anyone other than Mr. Smriga, his investigators or Mr. Gross, if he chooses. Thank you for being with us. Anything else, Mr. Smriga?

MR. SMRIGA: No, Your Honor, not in the way of evidence. I just would argue, Your Honor, that I think the court can imagine the argument. They walked in there. They didn't know that they were there. They didn't know that they were going to be there. They knew that it was probable that keys could be found in there. And when they got in there, rather than smash the van or use some other way to break into the van that they had a right to search, they inquired about keys. It's not a question of the police subverting the laws against search and seizure, because clearly if they had asked for it, probably it would have been easy for them to get a warrant if they had requested keys.

THE COURT: That's probably very true and that's the irony of the whole situation.

MR. SMRIGA: I htink if they had put sufficient things in the warrant, they might have

been able to establish -- so it's not a question of them trying to put themselves in a position to seize something that they would have no right to seize. The keys are there. They don't know that they're in there and both officers indicated they didn't know where they were located or if they were definitely there. They saw the keys and they took them. I think that is inadvertance within the meaning of the cases I cited previously.

MR. GROSS: All I can say is this, Your Honor. That both officers, I think, were pretty candid and honest and everything they said supports what you said. There was no inadvertance. Detective Russell, if not specifically asked to look, would never have thought of those keys to be anything of evidence. Detective DeReiso asked when he walked in. There was no mention, you know, of this being a van or so that everything that Your Honor brought in when you suppressed it, is exactly what the evidence brought to bear. And I just think that it's superfluous at this point because your articulation earlier, is exactly what the facts brought out here.

MR. SMRIGA: Your Honor, I would ask the court at this point, renewing its decision to suppress the keys. Again the state would be

offering the keys that were subject of this hearing as evidence against the defendant at trial. I understand the court's ruling to say that those keys should be suppressed for the reasons previously stated. As I indicated before, without the keys, I don't think that there is a sufficient nexus between the contraband and the defendant that would warrant any other result at this point than the court dismissing the matter with prejudice. And if the court does that, I ask for permission to appeal the court's decision to suppress the keys.

THE COURT: First of all, let me just add that in addition to the observations that I made before the hearing, additionally I note that Officer DeReiso very candidly said that he observed the son of Mrs. Hamilton, presumably using a key to enter the van, so that it was within his observations to note a method by which access would be gained to this very vehicle. That he assumed that the key would be either on the persons of the Hamiltons or contained within the apartment and so that -- and then of course, he reaffirmed the facts that were advised to the court, namely that almost the first conversation with Mrs. Hamilton was, do you have the keys to the van and also

of course the observations of Detective Russell who obviously looked at the key originally from the scenario he gave and then returned to the keys after being asked to look for keys which in the court's opinion only reinforces the unfortunate lack of inadvertance in this particular case which seems to be an ingredient that the court requires and that's weighed against the reasonable foreseeability that an officer could have anticipated, the need for those keys. Where they were and the fact that this is in part, a balancing by our appellate courts and the court in this case feels the balancing so occurs that the rights of the accused are greated than the pursuit of those who may break our laws and the court is bound by its oath to follow those precepts so I would reaffirm my granting the motion to suppress.

MR. GROSS: Thank you, Your Honor.

THE COURT: The court finds that because the state has represented to the court that it is unable to go forward without this nexus between the accused and the obvious contraband, namely the narcotic substance which is important to the state's case, that the case will be dismissed with prejudice against Mrs. Hamilton. And your request for the right to appeal the

issue is granted and encouraged because it is a very important area of the law. We're not taking sides with the state against Mrs. Hamilton, but I think we're right on the very cutting edge of a very interesting question, which certainly would be very helpful to future law enforcement. And possibly to this case ultimately, if I have erred in some way.

******

NO. 32634	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF FAIRFIELD
VS	:	AT BRIDGEPORT
DAISY HAMILTON	:	JULY 20, 1987

C E R T I F I C A T I O N

I hereby certify that the foregoing is a true and accurate transcript of the testimony in the above entitled case heard before the Honorable Edward Stodolink in the Superior Court for the Judicial District of Fairfield at Bridgeport on July 20,1987. Dated this 9th day of November, 1987 at Bridgeport, Connecticut.

Virginia Stefanko
Court Monitor
Judicial Department
State of Conn.

AFFIDAVIT AND APPLICATION
SEARCH AND SEIZURE WARRANT
CCP 7A REV 3 82
GEN STAT 54 33a 54 33j

STATE OF CONNECTICUT
SUPERIOR COURT
CCP 7D must be completed

TO: A Judge of the Superior Court

The undersigned, being duly sworn, complains on oath that the undersigned has probable cause to believe that certain property, to wit:
caine,any paraphernalia used in the cutting and packaging of cocaine such
scales,grinders,strainers,measuring spones,plastic baggies,glassine bags,
ramid paper,plastic vials,lactose,any monies and or records pertaining to
sales of cocaine and any firearms used for the personal protection of drug
[X] is possessed, controlled, designed or intended for use as a means of committing the crime of . . . traffickers.
21a-277a Possesion of Narcotic With Intent to Sell.

[X] is or has been or may be used as the means of committing the crime of . . .
21a-277a Possesion of Narcotic With Intent to Sell.

[ ] was stolen or embezzled from . . .

[X] constitutes evidence of the following crime or that a particular person participated in the commission of the crime
21a-277a Possesion of Narcotic With Intent to Sell.

[ ] is in the possession, custody or control of a journalist or news organization, to wit . . .

and is within or upon a certain person, place, or thing, to wit . . P.T.Barnum Apartments,B-5 A-305 of a mulit family
ulit story housing project located in the west end of the City of Bridgeport.,Ct.

And that the facts establishing the grounds for issuing a Search and Seizure Warrant are the following

1. That your below signed affiants Detectives Richard DeRiso and Miguel
rdozo are regular members of the Bridgeport Police Department and as such
ve been for the period of over 8½ and 10 years respectively. During this
me they have initiated anb participated in numerous investigations and
rveillances and have made arrests involved in the illegal sale and or
ssesion of narcotics in violation of the existing Connecticut General
atute. At the present time both affiants are assigned to the Special Service
vision of the Bridgeport Police Department.

2. That on February 10th,1987 the below signed affiants meet with a reliable
d confidential informent who's information in the past has led to numerous
rest for Narcotics and sezures of large quantities of Narcotics.The informent
ld the affiants about a Daisy Hamilton who resides in P.T.B. Apartments B-5
305 of being a crack dealer. The informant also stated that for the past
ar he has purchased crack from Daisy out of her apartment. The informent agree
make a controlled Narcotic buy from Daisy at her apartment P.T. B. apartment
5 A-305. The below signed affiants took the informant to the west end area at
ich time theinformant was searched to make sure he had no narcotic,contraband
ney onhim. Below signed affiants at this time gave the informant $10.00 in
S. currency to make the purchase. Affiants let the informant out of the
marked police vehicle,keeping him in view at all time and watched him enter th
orway of building #5 which leads to apartment #305 of the P.T.Barnum Apartment
ter a few minutes the below signed affiants observed the informant exit the
me doorway and returned to the same area that he was let out. The informant
ld the below signed affiants that when he went to Apt.305 he spoke to a Black
male that he knows as Daisy,after asking her if she had any Crack,she told him
e was out now and to come back later. The informant returned the $10.00 in U.S
rrency to the affiants.

(Over, For Continuing Affidavit, Signatures of Affiant(s), and Jurat)

AFFIDAVIT AND APPLICATION
(Continued)

3. That on February 11th,1987 below signed affiants meet with the relable and confidential informant that was mentioned in paragraph 2. The below signed affiants took the informant to the west end area again at which time the informant was searched to make sure he had no narcotic,contraband or money on him. Below signed affiants at this time gave the informant the same $10.00 dollars to make the controlled purchase of Crack. Affiants let the informant out of the unmarked police vehicle,keeping him in view at all time and watched him enter the doorway of building #5 which leads to apartment #305 of the P.T. Barnum Apartments. After a few minutes the below signed affiants observed the informant exit the same doorway and return to the same area that he was let ou at. The informant told the below signed affiants that when he went to Apt.#30 he spoke to a black female he knows as Daisy. After asking her if she had Crack she took $10.00 from him and asked him to wait. After a few minutes Dayomas,known to him as Daisys son told the informant to come with him. They both exited the apartment and on the way down the stairs the informant asked Dayomas where are we going and Dayomas replied that they were keeping the Crac downstairs in the Van. Informant stated that Dayomas opened the drivers side of a Tan and orange,Ford Van and take out one vial and hand it tothe informant Affiants also observed the informant and the young black male go to the tan an orange Ford van which was parked just outside the door,affiants were unable to registration at this time due to van being backed-up against the wall. Inform turned over to Detective DeRiso a small vial containing a hard off white subst which he had just purchased in the above transaction. Informant was once agai searched to make sure he was not carring any other narcotics or contraband.

4. That on February 11th,1987 Detective DeRiso in the offices of the Special Services Division did a field test of the hard off white substanse inside the plastic vial which was purchased at P.T.Barnum B-5 A-#305 from Daisy Hamilton and her son Dayomas. The field test was conducted with OVI Inc. test # Cobalt Thioyanate Reagent for Cocaine,Procaine,Tetracaine and Methadon. The test showed a positive reaction to cocaine. The Evidence was then weighed,marked, packaged and sealed,for shipment to the state lab. Evidence locked in the narcotic locker of the Special Services Division till shipment tothe State Lab.

5. That on February 13th Detective Cardozo did a tenats check ofthe P.T.Barnu Apartments which showed that apartment #305 of building #5 is rented to a Dais Hamilton.

6. That on February 13th Detective DeRiso recieved a telephone call from the confidential and reliable informant mentioned in paragraphs 2 and 3. At which time he told Detective DeRiso that the orange and tan van were he purchased th Crack was unregistered because it had no plate on it.

The undersigned has not presented this application in any other court or to any other judge.

Wherefore the undersigned prays that a warrant may issue commanding a proper officer to search said person or to enter into or upon s place or thing, search the same, and take into custody all such property.

Signed at Bridgeport, Connecticut, this 17th day of February, 19 87	SIGNATURE AND TITLE OF AFFIANT X [signature]
Signed at Bridgeport, Connecticut, this 17th day of February, 19 87	SIGNATURE AND TITLE OF AFFIANT X [signature]
JURAT Subscribed and sworn to before me this 17th day of February 19 87	SIGNED (Judge of the Superior Court) X [signature]

AFFIDAVIT AND APPLICATION
(Continued)

7. That on February 13th the below signed affiants conducted an investigati in the area of the P T. Barnum apartments B-5 at which time they observed th same Ford Van tan and orange in color still parked in the same location.

8. That based on our training and experience,knowledge of the crime,the information recieved from the reliable and confidential informant,the contro narcotic buy of cocaine madeby the reliable and confidential informant,the field test conducted by Det. Richard DeRiso on the controlled narcotic buy, that the affiants have established probable cause to beleive that the apartm at P.T.Barum Apartments ,B-5 A-305.Bridgeport,Connecticut,tan and orange For black female known as Daisy Hamilton DOB 9/9/49 and black male known as Day DOB 12/12/73 are violating Connecticut General Statue 21a-277a Possesion of Narcotic with Intent to Sell.

The undersigned has not presented this application in any other court or to any other judge.

Wherefore the undersigned prays that a warrant may issue commanding a proper officer to search said person or to enter into or upon s place or thing, search the same, and take into custody all such property.

Signed at Bridgeport, Connecticut, this 17 day of February, 19 87	SIGNATURE AND TITLE OF AFFIANT X
Signed at Bridgeport, Connecticut, this 17 day of February, 19 87	SIGNATURE AND TITLE OF AFFIANT X
JURAT Subscribed and sworn to before me this 17 day of February, 19 87	SIGNED (As Judge of the Superior Court) X

SEARCH AND SEIZURE WARRANT
CCP 7B REV 3-82

STATE OF CONNECTICUT
SUPERIOR COURT

The foregoing Affidavit and Application for Search and Seizure Warrant having been presented to and been considered by the undersigne a Judge of the Superior Court, the undersigned (a) is satisfied therefrom that grounds exist for said Application, and (b) finds that s Affidavit establishes grounds and probable cause for the undersigned to issue this Search and Seizure Warrant, such probable cause being t following: From said Affidavit, the undersigned finds that there is probable cause for the undersigned to believe that the property descrit in the foregoing Affidavit and Application is within or upon the person, if any, named or described in the foregoing Affidavit and Applicati or the place or thing, if any, described in the foregoing Affidavit and Application, under the conditions and circumstances set forth in t foregoing Affidavit and Application, and that, therefore, a Search and Seizure Warrant should issue for said property.

NOW THEREFORE, by Authority of the State of Connecticut, I hereby command any Police Officer of a regularly organized police department, any State Policeman, or any conservation officer, special conservation officer or patrolman acting pursuant to Connecticut General Statute 26-6 to whom these presents shall come within a reasonable time after the date of this warrant to

[X] enter into or upon and search the place or thing described in the foregoing Affidavit and Application, to wit: P.T.Barnum Apartments B-5 A-305 of a multi family , multi story housing porject located in the west end of the City of Bridgeport,Ct.

[ ] search the person described in the foregoing Affidavit and Application, to wit:

for the property described in the foregoing Affidavit and Application, to wit: Cocaine,any paraphernila used i cutting and packaging of cocaine such as scales,grinders,strainers,measuring spoons,plastic baggies,glassine bags,pyramid papers,plastic vials,lactose,an monies and or records pertaining to the sales of cocaine and any firearms us for the personal protection of drug traffickers.

and upon finding said property to seize the same, take and keep it in custody until the further order of the court, and with reasonable prom ness make due return of this warrant accompahied by a written inventory of all property seized.

Signed at Bridgeport Connecticut, this 17 day of Febuary , 19 87

SIGNED (A Judge of the Superior Court)
X

RETURN FOR AND INVENTORY
PROPERTY SEIZED ON SEARCH AND SEIZURE WARRANT

CCP-7C REV. 11-78
GEN. STAT. 54-33c

Inventory Control No. 87-46

JUDICIAL DISTRICT OF	AT (Address)	DATE OF SEIZURE
~~G.A. 2~~ FFLD.	~~172 Golden Hill~~ 1661 Main St. Bpt.,Ct.	2-18-87

DOCKET NO.	UNIFORM ARREST NO.	POLICE CASE NO.	COMPANION CASE NO.
CR- 32634	862163	87-449	

Then and there by virtue of and pursuant to the authority of the foregoing warrant, I searched the person, place, or thing named therein to wit: P.T.Barnum Apartments,B-5 A-305 of a mulit family,multi story housing projec located in the west end of the City of Bringeport,Ct.

and found thereon or therein, seized, and now hold in custody, the following property . . .

One plastic baggie containing vials with caps.
One hand held scale
One larger plastic baggie containing smaller plastic zip lock baggies.

which was possessed, controlled, designed, or intended for use as a means of committing the crime described in the foregoing affidavit and application, or is or has been used as the means of committing the crime described in the foregoing affidavit and application, or was stolen or embezzled, or constitutes evidence of a crime, or that a particular person participated in the commission of a crime, and I gave a copy of such warrant to Daisy Hamilton, the owner or occupant of the dwelling, structure, motor vehicle or place designated therein, or to , the person named therein, on Febuary 18 19 8

DATE OF THIS RETURN	SIGNED (Officer's signature and department)
Febuary 18 , 1987	[signature] Bridgeport Police Department

NOTE: Form CCP-7A, 7B and 7C must be supplemented by Form CCP-7D (or CCT-7D).

A.88

RETURN FOR AND INVENTORY
PROPERTY SEIZED ON SEARCH AND SEIZURE WARRANT

CCP-7C REV. 11-78
GEN. STAT. 54 33c

Inventory Control No. 87-46

JUDICIAL DISTRICT OF	AT (Address)	DATE OF SEIZURE
~~G.A. 2~~ FFLD	~~172 Golden Hill St.~~ Bpt.,Ct.	2-18-87

DOCKET NO.	UNIFORM ARREST NO.	POLICE CASE NO.	COMPANION CASE NO.
~~CR~~ 32634	862163	87-449	

Then and there by virtue of and pursuant to the authority of the foregoing warrant, I searched the person, place, or thing named therein to wit: A tan and orange Ford van with no plates at B-5 of the P.T.Barnum Apartments a multi family , multi story housing project located in the west end of the City of Bridgeport,Ct.

and found thereon or therein, seized, and now hold in custody, the following property . . .

(1) One black glass case containing 6 vials containing a hard off white substance.
(2) Plastic baggie containing plastic vials with residue and 6 used screens with a burnt residue.
(3) Three Manila envelops containing screens.
(4) One plastic baggie containing small zip lock baggies.
(5) 8 glass tubes
(7) One package of pink caps.
(8) One package of medium vials with blue caps.
(9) Four packages of red caps.
(10) Three packages of green caps.
(11) Three packages of blue caps.
(12) Seven packages of small plastic vials
(13) Two packages of medium plastic vials.

which was possessed, controlled, designed, or intended for use as a means of committing the crime described in the foregoing affidavit and application, or is or has been used as the means of committing the crime described in the foregoing affidavit and application, or was stolen or embezzled, or constitutes evidence of a crime, or that a particular person participated in the commission of a crime; and I gave a copy of such warrant to Daisy Hamilton , the owner of occupant of the dwelling, structure, motor vehicle or place designated therein, or to , the person named therein, on Febuary 18 1987

DATE OF THIS RETURN	SIGNED (Officer's signature and department)
Febuary 18, 1987	X Bridgeport Police Department

NOTE: Form CCP-7A, 7B and 7C must be supplemented by Form CCP-7D (or CCT-7D).